CLERK'S COPY.

154 9543

Volume 18

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 28

FEDERAL TRADE COMMISSION, PETITIONER,
vs.
THE CEMENT INSTITUTE, ET AL.

No. 29

FEDERAL TRADE COMMISSION, PETITIONER,
vs.
AETNA PORTLAND CEMENT COMPANY, ET AL.

No. 30

FEDERAL TRADE COMMISSION, PETITIONER,
vs.
MARQUETTE CEMENT MANUFACTURING COMPANY

No. 31

FEDERAL TRADE COMMISSION, PETITIONER,
vs.
CALAVERAS CEMENT COMPANY

No. 32

FEDERAL TRADE COMMISSION, PETITIONER,
vs.
HURON PORTLAND CEMENT COMPANY

No. 33

FEDERAL TRADE COMMISSION, PETITIONER,
vs.
SUPERIOR PORTLAND CEMENT, INC., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 20, 1947
CERTIORARI GRANTED MARCH 10, 1947

INDEX TO VOLUME 18.

Pages 13249 to 13969.

TRANSCRIPT OF TESTIMONY.

Corrections in testimony 13660, 13755

WITNESSES FOR RESPONDENTS (CONTINUED).

Testimony of:
Fairchild, Fred R. 13887
Griffin, Clare E. 13249
Vaile, Roland S. 13676

(Testimony of Witnesses contained in pages 42929 to 44800 of the Original Transcript.)

42929 Washington, D. C.,
Wednesday, September 4, 1940.

42935 Trial Examiner Norwood: Well, suppose you take this letter and list and give us your reaction to
42936 it when you check it. It is as appears in the record at page 42840 and following.

Pursuant to agreement, rulings were reserved on certain objections to parts of stipulations submitted by the Respondents named below. I have studied the record containing the stipulations and the exhibits, and have also considered the statements of Mr. Works, Counsel for Riverside, which were incorporated in his letter of August 31, 1940, and will appear in the record immediately following my rulings, which rulings are as follows:

42937 Re: Riversitle Cement Company.

Record 42865. Objections, page 42886, are overruled except as follows: The proffer by this Respondent of documents heretofore marked Commission's Exhibits 571-9K to 12-K for identification is rejected. Respondents' Exhibits 3450 to 3455-C are received because the Government withdrew its objections.

42942 CLARE E. GRIFFIN was thereupon called as a witness for the Respondents, and, having been first duly sworn, testified as follows:

Mr. Bond: Your Honor, I have here a statement which embodies what Professor Griffin would testify to as to his training, experience, and qualifications as an expert, and I understand it is the custom to accept such a statement and incorporate it in the record as though it had been given by the witness.

Trial Examiner Norwood: Give Counsel for the Commission a copy of it.

Off the record.

(There was a discussion off the record.)

42943 Trial Examiner Norwood: On the record.

Is that agreeable for that to go in the record at this point?

Mr. Wooden: As a statement of the witness' background and expert qualifications, yes, Your Honor. If it comes

up to a question of any factual knowledge, another question will be presented.

Trial Examiner Norwood: Let the statement be incorporated as if the witness had testified to it, really.

Direct Examination.

Trial Examiner Norwood: Do you testify to the truth of this statement?

The Witness: I do, sir; yes, sir.

The Witness: I am at the present time connected with the University of Michigan located at Ann Arbor, Mich. I am Professor of Marketing, Director of the Bureau of Business Research and Dean of the School of Business Administration.

My college training consisted in attending Albion College, where I received my A.B. degree, two years at the University of Illinois, one year at Johns Hopkins. I received my Ph.D. degree from the University of Illinois in 1918.

I began teaching economics at Dartmouth College in 1916. I taught at Dartmouth for one year and I then 42944 became on instructor in economics at Johns Hopkins during the year 1917-18.

After receiving my Doctor's degree, I became associated with the Statistics Branch of the General Staff in the War Department in Washington. Then with the Central Bureau of Planning and Statistics, and later with the United States Shipping Board.

Following 1919, I went to the University of Michigan and was associate professor of commerce and industry in the Department of Economics. In 1924 I became associated with the School of Business Administration which had just then been founded at the University of Michigan. My position at that time was professor of marketing, a position which I still hold. In 1927, in addition to my teaching position, I became Acting Dean of the School of Business Administration and in 1929 the Dean of that school.

For a time after 1919, I taught various subjects at the University of Michigan, including Business Organization and Management, Marketing, and Foreign Trade. Since 1924 I have confined myself to marketing, sales administration, market analysis and general administrative work.

In the course of my work I have published various arti-

cles on economic subjects. For some years I was a member and a director of the Business Research Council until it was dissolved about a year ago. I also served for
42945 several years as a committee member of the Social Science Research Council. I am chairman of the Research Committee of the American Association of Collegiate Schools of Business and a member of the American Marketing Association and of the American Economic Association.

By Mr. Bond:

Q. Professor, have you studied the methods of marketing used in this country, including the so-called basing-point methods?

A. Yes. I have been studying the methods of marketing used in this country for a good many years, more than 20 years.

Q. And during your period of teaching, have you had occasion to examine and familiarize yourself with such material as has been published on basing-point methods of marketing?

A. Yes, sir.

Q. Yes.

Mr. Bond: We tender the witness as a duly qualified expert in the economic field.

Trial Examiner Norwood: We shall accept him as such on this statement as the testimony just given.

42946 Q. Professor, has the question of competition in its various forms and aspects received considerable attention from economists in recent years?

A. Yes. I should say it has received considerable attention in recent years.

Q. Well, will you contrast the present views as a result of this development with the views of the older
42947 economists on this subject?

A. Yes. In recent years, particularly in the last two decades, there has been quite a bit of emphasis placed upon the concepts of perfect and imperfect competition, the older economists generally seem to assume that we had two—

42948 Q. Do you recall where you stopped, Professor?

Trial Examiner Norwood: Go ahead.

A. Yes. I think I was saying that the older economists seemed to assume that we had two things, one of which was

the opposite of the other; that is, we had competition on the one side and monopoly on the other. Now, the attention of economists in recent years has been directed to that field lying between those two extremes, and there has been assertion of the view that they are—that most all economic activity falls in that range between these two extremes.

By Mr. Bond:

Q. Now, did the older economists use the term "perfect competition"?

A. Did they use the term "perfect competition"?

Q. Yes.

A. They made certain assumptions which were the assumptions that the present-day economist designates by that term, "perfect competition." I think the older economists, as perhaps my earlier answer implied, when
42949 he talked about competition, was implying that that was perfect competition.

Q. Now, what is meant by economists by this term "perfect competition"?

A. Perfect competition to an economist is a logical concept. It refers to a situation in which you have a very large number of buyers and sellers, such a large number of buyers and sellers that the individuals do not need to take into account the effect of their actions upon the market or upon the competitors. There also is included in the concept standardized or identical products being sold by several different sellers; the perfect knowledge of the market on the part of both buyers and sellers. I think—there is one other I would like to add to that, and that is a high degree of mobility of the factors of production, and in the concept of perfect competition there is the assumption made that this adjustment of the factors of production is practically timeless and frictionless.

Q. Will you explain a little further, Professor, what you mean by this phrase "high degree of mobility of the factors of production"?

A. Yes. The concept is that the factors of production will naturally flow from low profit employment to high profit employment; that is, they will flow from one industry to another and flow from one part of the country to another always seeking the most favorable rates of return,
42950 and these factors of production, I might add, are considered to be capital and labor, land and man-

agerial services, and by that process of the flow of these factors to more high profit employment it is assumed that we bring about an approximation of these, that these affect the supply, that the price is kept in line with cost of production.

Q. Now, you used a phrase, I think substantially such as this: "a timeless and frictionless shifting." Will you explain a little further what you meant by that.

A. Yes. In actual practice, of course, it is clear that this mobility which I have referred to cannot be perfect in the sense that there is no time lag. It does take time for capital to shift from one industry to another.

For example, a plant wears out, and replacement funds need to be accumulated for investment in the new plant or in new industries. It takes some time before labor will actually pull up from the place where the workers are living, and to move to another place in search of high rates of return, and so on. Now, under economic reasoning it is frequently assumed, and as I think assumed under the concept of perfect competition, that all that adjustment is made in a timeless sort of way, that we eliminate that time lag by assumption.

Q. Now, what is meant, Professor, by the term "imperfect competition"?

A. Well, imperfect competition would naturally
42951 be any departure from this set of conditions which I have just described as characteristic of perfect competition; specifically would be a small number of buyers and sellers, too small to have the effect which I suggested a moment ago. Anything less than perfect knowledge of the market on the part of the buyers and sellers. In fact, any of the departures from the assumptions of perfect competition would give you the situation of imperfect competition.

Q. Is there any example in industry in this country of perfect competition?

42953 A. No, I do not think so, and logically there could not be because it is perfectly apparent from some of the assumptions that I have described that they do not describe the actual world. We never do have perfect knowledge of a market, on the part of the buyers and sellers, and we certainly can never have a timeless adjustment of the factors of production to changes in market conditions. It is a logical concept that is not expected to find its counterpart in an actual industrial situation.

Trial Examiner Norwood: Purely theoretical?

The Witness: Yes.

By Mr. Bond:

Q. Now, do these terms "perfect competition" and "imperfect competition" have any relation to the question of legality?

A. I do not see how they could have.

Mr. Wooden: That is objected to.

A. I am not posing as a legal expert, but—

Mr. Wooden: That is objected to for that reason, the witness has just stated. I object.

Mr. Bond: Well, as used by economists, in other words.

Trial Examiner Norwood: Yes. He may answer that. The objection is overruled.

A. As used by economists in its purely logical sense, as physicists use the concept of a vacuum, perfect
42954 vacuum, falling bodies acting in a vacuum, it is a very convenient tool for economic analysis.

Trial Examiner Norwood: And you are not discussing it from the standpoint of legality, then?

The Witness: Oh, no; no, sir.

By Mr. Bond:

Q. Is imperfect competition the rare or common form of competition in American industry?

A. Why, it is very common; almost universal.

Q. Does imperfect competition imply the absence of competition?

A. No. Imperfect competition implies just what the word says, that there is competition but that it is imperfect by comparison with these logical—this logical concept that I have set up. As a matter of fact, I may go further and say that imperfect competition is frequently more keen than perfect competition in the latter case using "competition" in the business man's, usual layman's sense of the word.

Q. Can you give us an example, Professor, of the state of imperfect competition which in your opinion represents more keen competition than would exist under perfect competition?

A. Yes. One of a number of examples might be given. Suppose I suggest the case of ocean steamship lines or of individual vessels which, if we can assume for the mo-

ment that they are not operating under conference
42955 agreements, or anything of that kind, are competing for traffic in ascertain port, and that in this port there is an inadequate amount of traffic to supply all of the vessels. Under those circumstances, the competition between these vessels might very well bring the rate down to a point considerably below cost of the service. Now, it is one of the assumptions of perfect competition that price approaches cost of production plus a normal rate of return. In this case it goes far below the cost of production plus a fair rate of return.

Q. Do you find perfect competition even in the case of agriculture?

A. No, I do not think you have it even in the case of agriculture. For one thing, very clearly there cannot be perfect knowledge of the market, of all the factors in the market, and the timeless adjustment of the factors of production and high degree of mobility of the factors of production is conspicuously lacking in the case of agriculture.

Q. Has the introduction of the factory system in industry had any effect on the type of condition that we have?

A. Yes. I think it has, indeed. I think it is the prevalence of the factory system that has led economics to pay so much attention to this distinction that we have been speaking of. It has had an effect upon the nature of competition I should say in two ways: One by increasing the portion
of fixed or overhead costs, and the other by reducing
42956 the number of the sellers in the particular market.

Perhaps I should amplify that a bit. The factory system, of course, implies use of machinery, and machinery implies fixed capital, and fixed capital implies fixed costs and overhead costs. Also, the factory system usually means that you have fewer and larger producing units than you would have under the handcraft method of production, and this smaller number of producers is one of the features that is in contrast to the concept of perfect competition.

Q. Now, assuming, Professor, that cement is manufactured by eighty or ninety different companies in the United States, with between one hundred and fifty and two hundred mills distributed geographically over the United States, can you picture any method of marketing cement under those conditions that would even approximate perfect competition?

A. No, I cannot, because of the limited number of producers, and particularly the limited number of producers at any one place.

42957 Q. Professor, the complaint in this case charges that the practices in this industry have destroyed competition in price. Do you consider it possible to separate competition in price from other elements of competition, such as quantity, quality, and service?

A. Logically, I do not think you can do so. Competition is—the essence of competition is rivalry, rivalry on the part of sellers who seek the patronage of buyers, and the important thing here is the ratio that exists between what the seller offers and what the buyer is asked to pay. Now, whether that ratio is made more attractive to the buyer by offering a larger bundle of things and services than are offered or by reducing the amount that the buyer is asked to pay, seems to me is a matter of no logical significance. If a farmer is selling,—if farmers are selling a bushel of potatoes at one dollar, and one farmer decides to give a heaped-up basket, a little more than a bushel of potatoes for a dollar, then I see no logical distinction between that and some farmer offering potatoes at 98 cents or 95 cents. I think there is no logical distinction there.

Q. Well, can you give us an example of the offering of the same goods by two sellers at the same price in 42958 which you feel nevertheless there is competition of the price?

A. Well, yes. I think we might take the familiar example of two gasoline stations setting on opposite corners. The price of the product that they are selling is the same, and still if the two are operating independently and are vieing for the patronage of the consumer, then it seems to me there is competition whether that rivalry takes the form of a lowering of the price or whether it takes the form of an attempt to give better service or cleaner stations, and one thing and another.

Trial Examiner Norwood: Well, in the illustration there, the potatoes, where one gave more potatoes than the other for the same price, do you consider that is in effect price competition?

The Witness: Yes. I see no logical difference between that, and, if I may add, to tie that up with the other, I see no difference between adding a few potatoes to the

basket or adding a little more service in wiping wind shields, or filling tires, or checking batteries.

By Mr. Bond:

Q. Do you think of any other illustration of identical price where you consider the price competition nevertheless exists?

A. Well, there is one rather interesting one lately; that is, several retailers selling a standardized brand product, selling a branded product at a standard price. I will say it is interesting because that has recently been legal-
42959 ized. The purpose, presumably, of retailers in urging that such a law should be adopted was to eliminate the competition between the retailers. The effect, however, in some cases has been to increase the competition in service between the retailers, and so we are back pretty much where we were before, and, personally, I consider that there is no essential difference in the old practice of selling, of one retailer trying to sell a product at less than the rest of them, or this one retailer trying to provide more of services along with the product than the rest of them.

Q. And does location enter into that?

A. Yes. Sellers would naturally vie in rivalry in attempting to offer the most attractive location, gasoline stations for example.

Q. And do you consider that they are competing in price in the case of retailers of goods, such as you described?

A. As I have said in the most logical defensible use of the term, I think that is true.

I might add that I have no objection to people using the term "price competition" when they are merely trying to point to the variation in the price side of the equation, but fundamentally, I think there is no logical difference between that and the other competition.

Q. Now, assume that the testimony has shown that at any given point where there is demand for cement
42960 the representatives of different manufacturers are each calling upon the trade individually to secure the business for their respective companies by building up producer good will through prompt and efficient delivery, the satisfactory handling of claims for loss or shortages, and by allowance for return of bags, by assisting the dealer in making sales, by securing prices for a dealer or contractor on commodities other than cement needed for a specific job, by supplying free water or other items for use

on the job; by the use of the most convenient type of package, by the use of the most convenient type of railroad cars for bulk shipments, by shipments in proprietary trucks in small lots, by calling to the attention of the purchaser, jobs where cement would be used, and by rendering service to the producer in the form of engineering services, and advising him in other ways in the handling of cement; would you say that under such conditions price competition was present even though the amounts in dollars and cents demanded by the different salesmen was identical, and all other terms of sale were identical?

42962 A. Without attempting to evaluate every one of these conditions, I should say that in toto they represent an attempt to present to the buyer an effective bundle of goods and services, and presumably a more attractive bundle of goods and services than somebody else is offering. If that is true, then I should say that that is logically in the same class with price competition, even though the prices were the same for the cement sold.

42963 Trial Examiner Norwood: Where those services operate to produce a lessening of cost to the producer?

The Witness: No, not necessarily.

Trial Examiner Norwood: Lessening of cost of operation?

The Witness: Well, frankly, Your Honor, I would not want to try to appraise the business man's or the buyer's motive for buying the cement, and what he has in mind.

Trial Examiner Norwood: But where the allowances are reflected in expense, reflecting a saving to the producer?

The Witness: Not necessarily.

Trial Examiner Norwood: Where one competitor makes or offers services or makes allowances which operate to reduce expenses of the producer, or, in other words, it is reflected in the ultimate costs?

The Witness: I would not narrow it down so far in respect to Your Honor's suggestion.

Trial Examiner Norwood: Under those conditions, would it or would it not be classed competition?

The Witness: Yes, it would there, but my answer would not be restricted to that.

Trial Examiner Norwood: Well, I did not ask you that.

The Witness: The sellers are presumably try-
42964 ing to offer a bundle of services that is more attractive to the buyer. Now, whether it is more attractive because it reduces the buyer's cost of doing business, or for some other reason we have no way of knowing.

Trial Examiner Norwood: But what we are trying to get at, which of those activities could be termed price competition?

The Witness: I should say any activities which represent an offer on the part of the seller to present a more attractive bundle of goods and services to the buyer falls under this head of price competition.

By Mr. Bond:

Q. Now, if each producer of cement is free to change his price at will and maintains his right to make such a change, would this fact have any relation to the existence of price competition?

A. I should say that if each buyer is free to change his price at will, and is at the time maintaining, asserting that right, then that buyer is engaged in competition, and that that would be equally true whether—that is, that seller, I beg your pardon—the seller would be engaged in competition, and that would be equally true whether the seller did in fact lower the price or whether he left that price at the same point, or whether he perhaps raised the price even
higher than the competitor's price. There are cir-
42965 cumstances in which that can be explained on competitive grounds.

Q. The question was, Professor, whether this had any relation to price competition. In your answer you said it would be competition. Did you intend to limit it in that way?

A. No. I was referring back to my previous statements that in my opinion the most logical defensible use of the term there is no difference between the two.

Q. Now can you give us any further explanation of concept of price competition?

A. I should say that competition, and, yes, price competition, exists when any seller has to take into account the action or probable reactions of his competitors. Indeed, this concept implies buyers as well, so a state of affairs in which buyers or sellers have to take into account, into their

actions or conditions—let me correct that: In which their actions are conditioned by the actions or probable reactions by others of their own group, that, in my opinion, is a competitive situation. Now, whether the price moved, whether a price move is actually made, and even regardless of the kind of price move is not conclusive proof one way or the other. In fact, there is no one single objective test of competition. It does seem to me, however, there are certain indicia of competition. Among these I will mention the constant striving to reduce costs of production, the existence of a considerable number of sellers who are
42966 appealing to the patronage of a given group of buyers and a continual alertness on their part to make as attractive offers to the possible buyers as they can, and I suppose one would add, if I am not duplicating, tendency of prices to maintain a reasonably close relationship to cost, at least not above cost by more than a normal margin of profit.

Q. Is there a difference, Professor, between a condition of price competition and an act of price competition?

A. I think there is a difference.

Q. How would you distinguish the two?

A. An act of—a condition of price competition would exist, well, in the case of the gasoline stations I mentioned a moment ago, characterized by general alertness and watchfulness and readiness to adjust one's price or offerings to the price or offerings of competitors; an act of price competition might be regarded as the use of the weapon, the price, something like the distinction that I can see exists between an act of war and a state of war.

Q. Well, when prices have been momentarily different, become identical, do you consider that price competition has ceased?

42967 A. Oh, no. It could well be the competitive policy of a particular seller to meet his competitor's prices, never to let the competitor sell below him, that may be his fixed policy. I would say that was a competitive attitude, competitive policy.

Q. Now, the question that I am about to ask you, Professor, is one that we will describe as my long hypothetical question, and whenever reference is made to this hereafter I will ask you to consider your answer with reference to the assumptions that I shall now state:

Now, Professor, let us assume that the following descrip-

tion is a statement of the conditions of the cement industry as of July 1, 1937.

Q. Cement is a homogeneous commodity. There are approximately 150 cement mills, scattered throughout the United States, owned by more than 50 separate independent companies. Cement mills usually have large capacities with large capital investments. The capacity of most mills exceeds the local demand. Freight is a substantial part of the cost of cement delivered to the point of use or re-
42968 sale. The volume of the demand for cement varies in each locality from year to year and month to month. Sometimes there is a large demand in a given market and at other times there is a small demand in that market. The manufacturers of cement which market their product in any given territory are engaged in a struggle for tonnage. There are a very large number of buyers, and they are scattered throughout the country. At any point of substantial cement consumption there are several buyers. Buyers of cement (including dealers, contractors and other purchasers) are well informed with respect to the prices charged and the methods of sale employed by competing manufacturers. Buyers purchase on the basis of the lowest cost at the point of use or resale. For more than 20 years buyers have refused to pay any more for one brand of domestic cement than another. For more than 20 years cement has usually been quoted and sold at destination prices. Buyers of cement normally request prices f.o.b. destination. From time to time some manufacturers have, upon request, made sales to customers f.o.b. mill.

In quoting prices a manufacturer usually takes into consideration the prices which have been quoted by his competitors for delivery at the destinations in question. At any destination the openly quoted delivered price appears to reflect some pattern. The most prevalent of these patterns is the lowest combination of some price base plus actual freight from the basing point. Another pat-
42969 tern appears to exist when the same price is quoted at a number of adjacent destinations (such prices having sometimes been called in this case flat or zone prices). A third pattern appears to exist when prices radiate from some market area (such prices having been sometimes called in this case arbitrary prices and have been made around some ports to meet the competition of foreign cement, and at other places to meet other competitive con-

ditions). Flat, zone and arbitrary prices do not reflect the variations in actual freight charges.

Fifty or more mills are basing-point mills and about 60 percent of the productive capacity of all mills is located either at or within a few miles of basing-point mills. These basing-point mills are scattered throughout the country. Each manufacturer can at any time make its mill or plant a basing-point mill. At different times the same mill has been a base mill and a non-base mill. The total number of base mills has varied from time to time. All manufacturers, including those with basing-point mills, shrink their mill nets in making sales at distant points.

Whenever a lower price is openly quoted by one manufacturer, other manufacturers selling at that destination have found it necessary either to reduce their delivered price to meet this lower price or to withdraw from actively soliciting business at that point. It has been the experience of each manufacturer that an open reduction in 42970 prices is met immediately by competitors, and that a quoted reduction in prices does not bring a compensating increase in the cement consumed where the decrease is effective nor a compensating increase in the sales of the manufacturer initiating the decline. Each manufacturer has invested considerable time and money in developing channels of distribution, such as dealers and contractors. A mere reduction in price does not ordinarily drive a manufacturer out of a consuming area where it has developed customer good will. It has been the experience of each manufacturer that an open reduction in price has, from time to time, provoked further reductions in price by competitors. Such open price reductions have sometimes resulted in price wars.

For more than 20 years most manufacturers have regularly broadcast their prices to the dealer trade. In quoting decreases in price a manufacturer usually makes it effective at once and buyers are usually reimbursed for shipments made just prior to the decline. In quoting increases in price a manufacturer usually makes it effective in several days after the announcement is received by the trade. In the event of an increase no sales are made at the higher prices unless all competing companies announce that they are following the increase, and no such sales are made until the quotations of all the companies competing

in a given market have become effective. Any manu-
42971 facturer, no matter how small, can initiate an effective decrease in price.

For more than 20 years dealers and contractors have been protected on specific job contracts in the event of an increase in price, and have been given the benefit of the new low price in the event of any decline in price. Upon an increase in price dealers and contractors are protected on spot shipments by having an opportunity to buy any quantity of cement for which they will take shipment within 15 days after the increase has become effective in that market. Various manufacturers have found that they do not sell a substantial quantity of cement at their increased price even if their competitors followed the increase until several months after the increase became effective.

Some manufacturers have quite consistently adhered to their publicly quoted prices and other manufacturers have made sales at reductions from their publicly quoted prices, such sales being intended to be secret prices. Other manufacturers have made sales reflecting special terms or concessions not contained in their open price announcements. The announcements to the trade of these manufacturers which made secret prices or concessions quote a price not below the lowest openly quoted price of any competitors. These secret price cuts often become known to competitors. There have usually been some secret prices, concessions or variations in terms being made by various cement
42972 companies. The volume and amount of such secret prices have tended to increase when the demand for cement was small.

Customers often give manufacturers an opportunity to meet the lowest price available to them whether it is publicly or secretly quoted. Manufacturers have observed that if a special price is quoted to one customer, other customers upon learning of this fact demand similar concessions. When competitors learn of such price concessions they frequently meet such lower prices either by granting similar concessions at the same or other destinations, or by openly announcing a general price reduction which affects a large consuming area. Manufacturers have been shown from past experience that extensive secret price concessions in many markets may result in open price wars.

There have been price wars in the cement industry. In the event of price war prices have been reduced to a level

approximating the out-of-pocket costs of production. Price wars continue until some manufacturer takes the initiative in raising prices and his lead is followed by his competitors. The quoted price at any given destination does from time to time remain stable for long intervals except to the extent of changes in freight rates. In some markets there have been periods of time up to three or four years where the lowest quoted price has not changed, except to the extent of changes in freight rates.

42973 Diversions in transit are usually not permitted by manufacturers, and they try to discourage and prevent diversions. Many manufacturers in widely scattered parts of the United States do not permit dealers to come to their mills and take delivery by truck. Some receive no requests from customers for truck delivery. Some manufacturers allow dealers to come to the mill and take delivery by truck. Such sales are frequently made at the same price as though the cement had been delivered to the dealer's warehouse.

Now, Professor, will you state,—and before answering please give Mr. Wooden the chance to object—will you state whether or not in your opinion as an economist the marketing practices as described could logically be the result of an economic development in such an industry?

42974 A. I think the marketing practices just taken as a picture of the marketing practice of an industry could have developed as the result of a natural economic development of an industry.

By Mr. Bond:

Q. Now, under the same assumption, will you state whether or not you consider that the marketing
42975 practices described preclude the existence of free competition?

A. I do not think that they do.

Q. And will you state whether or not the marketing practices as described indicate to you as an economist that they were arrived at by collusion or conspiracy?

A. I do not see how an economist could draw the inference of collusion or conspiracy from the practice as described.

Q. Now, Professor, let us assume that the following description is the general story of the development of the marketing methods used in the cement industry: The manufacture of Portland cement in the United States com-

menced in the latter part of the Nineteenth Century. Around 1870 several mills were built in the Lehigh Valley in the northeastern part of Pennsylvania where there was a deposit of a so-called cement rock. Until about 40 years
ago most Portland cement used in the United States
42976 was imported from Europe, and moved into the interior from the Atlantic seaboard. Most of this imported cement was sold to distributors f.o.b. dock. The distributor shipped the cement to the point of use, where he resold the cement to the ultimate consumer at a delivered price. At that time foreign produced cement was considered by most purchasers to be superior to domestic cement.

For a time it was commonly believed that the Lehigh Valley was the only locality in the United States where high quality cement could be made. After some years it was discovered that a satisfactory Portland cement could be manufactured elsewhere by blending various materials. Thereafter mills were built in various parts of the country, so that today there are approximately 150 mills scattered throughout the United States. Originally, some brands of Portland cement sold at a premium over other brands, but all domestic Portland cements have for over 25 years exceeded the published minimum standard specifications and for over 20 years customers have refused to pay more for one brand than another. In the early days the Lehigh Valley mills shipped cement all over the United States. At first domestic Portland cement was sold usually f.o.b. mill to cement distributors, who resold to cement dealers and consumers at a price f.o.b. point of use; freight has always been a substantial part of the delivered cost. Some of the new western mills sold direct to dealers and consumers,
and when dealers were sold at or about the same
42977 price as distributors, the latter gradually died out and have not generally existed for the past 25 years. The competition by these new mills was continued, and prices were reduced by the Lehigh Valley mills. The older manufacturers slowly eliminated their distributors and made their sales direct and they took over the marketing practices, as well as the functions of the distributors. With the elimination of the distributor, there were three major factors leading to the selling at delivered prices, and that these were (1) the manufacturer stepped into the shoes of the distributor who had been selling at delivered prices.

(2) dealers requested delivered prices of information so they could compare delivered costs, and (3) the necessity of meeting competition of newer mills. Dealer customers, being used to delivered prices from distributors, requested either delivered prices or information as to the amount of freight charges; cement continued to be sold in some instances f.o.b. mill with the freight costs to point of delivery in cents per barrel often set forth in the quotations made by various manufacturers and in other instances f.o.b. destination. With the inception of this practice by a few manufacturers, purchasers usually requested cement prices on a delivered basis. Gradually most manufacturers acceded to the dealers' requests. Prices on cement came usually to be quoted and sales made on a delivered price basis.

As new mills were built in the Middle West and
42978 successively in other parts of the country which were nearer freightwise to various consuming markets than the Lehigh Valley mills; these new mills found that buyers purchased cement from that company which sold at the lowest delivered cost, so that the western mills either met the competition of the older Lehigh Valley mills by quoting delivered prices which were as low as the prices quoted by the Lehigh Valley mills or quoted lower prices. Some of the Lehigh Valley mills met the lower prices of the new mills by reducing their prices at such destination points. This process was repeated in many instances until one, and later a number, of these new mills quoted delivered prices which usually represented the sum of some fixed figure at the new mill point plus freight to destination. At first some of the Lehigh Valley mills attempted to meet this new competition by using varying and different f.o.b. mill prices in quoting for sales to purchasers at destinations nearer freightwise to the new mills than to the Lehigh Valley mills. Some of the eastern mills found that the practice of varying their f.o.b. mill prices resulted in customers' complaints and loss in good will, and made it difficult to meet the competition of the delivered prices quoted by the new western mills. As a result, they met the delivered prices quoted by their western competitors by quoting delivered prices. These prices usually reflected the sum of some base at a new mill plus freight to destination.

42979 As new mills were built throughout the country this process was repeated as to some of the mills which

made their delivered prices the sum of some base at their mill plus freight to destination, thus making their mills basing points, while some of the new mills did not make themselves basing points but quoted delivered prices to meet the prices quoted by competing mills; that such non-base mills are generally small mills or distant from large consuming markets.

About 1910 the practice of broadcasting quotations to customers and prospective customers was initiated by one manufacturer and thereafter other manufacturers also distributed printed quotations to the trade.

Cement prices generally came to be quoted on a delivered basis. From 1900 until 1930 the volume of cement consumed in the United States steadily increased. There has been from time to time an actual shortage of available cement in various markets. New mills were built either to meet the increased demand or as promotional ventures. Mills have usually been built at the site of satisfactory raw materials. Such materials are heavy and expensive to transport for any distance. Most mills are systematically kept up to date with the newest equipment. The product has been improved in quality. Such improvements in the product have increased costs of production. Many manufacturers have gone into bankruptcy and mills have been abandoned.

42980 Now, under these assumptions, will you state whether or not you consider that the economic development, as described in these assumptions, preclude the existence of free competition?

A. No, I do not think that the historical development as assumed would preclude the assumption of free competition.

By Mr. Bond:

Q. Now, on these same assumptions, will you state whether or not in your opinion as an economist the economic development described is one that you would normally expect to find in an industry of this type?

A. In its broad outlines, yes, I would expect to.

Q. Now, let me read you a further set of assumptions:

Cement is a homogeneous commodity and buyers will not pay more for one brand of cement than another. Buyers almost always compare the cost of the product laid down at the point of use or resale in making purchases of cement. Buyers are well informed with reference to prices quoted

and market conditions. Freight is a substantial part of the laid-down cost of cement. There are approximately
42981 150 cement mills scattered throughout the country. These mills are owned by more than 50 separate independent companies. Cement mills usually have large capacities with large capital investments. The capacity of most mills exceeds the local demand. Manufacturers have found that reductions in price do not bring a compensating increase in cement consumption.

Cement is usually sold at delivered prices. The prices quoted for cement by various manufacturers at any given destination are usually the same. Some manufacturers do from time to time make secret price concessions. The number of such concessions granted varies from time to time and such concessions usually become known to competitors. All manufacturers shrink their mill nets in making sales at distant points.

Cement is often shipped from one mill into the territory immediately adjacent to some other mill. Manufacturers usually refuse to allow customers to take delivery of cement in customers' trucks at the mill. Manufacturers usually do not permit diversion of cement in transit.

Now, on these assumptions, Professor, will you state whether or not, in your opinion as an economist, the marketing practices as thus described could logically be the result of an economic development in such an industry?

42982 A. I think they could logically be expected as the result of the historical development of such an industry.

Q. Now, under the same assumptions, will you state whether or not you consider the marketing practices as described in these assumptions preclude the existence of free competition?

A. I do not think they do.

Q. And will you state whether or not the marketing practices as described indicate to you as an economist that they were arrived at by collusion or conspiracy?

A. I do not think an economist could draw that inference.

42984 Q. Now, in addition, Professor, to the facts assumed in the last hypothetical question, let me ask you to assume the following: That the quoted delivered prices are usually the equivalent of the lowest combination

of some price base plus rail freight to the destinations in question, what effect would this additional assumption have upon your answer to the last two questions?

A. It would not affect my answer to the last two questions. Indeed, if accepting the assumptions that have been made I would expect that result from it.

Q. Now, in my question and in your answer you have used the term—I have used it—the term "free competition." How would you define that term?

A. I think "free competition" means the competition that is restrained only by the individual self interest of the competitor.

Q. Now, take the method of marketing described in the long hypothetical question, will you state whether or not such a method of marketing facilitates the meeting of local fluctuations of demand?

A. In some respects I can see that it would facili-
42985 tate the meeting of local fluctuations in demand. Suppose that the demand in a particular location increases. That demand could be supplied by drawing upon distant mills without the necessity of those mills undertaking the major decision of reducing the prices within their own territories. Conversely, if the demand for the product falls off within a particular territory then the local mills can meet that situation by selling more of their product at a distance, and can, without facing the necessity of a general price cut.

Q. Now, turning to a slightly different subject, Professor, are there any conditions which you can enumerate under which you would expect as an economist that a base point method would develop naturally in an industry?

A. Yes. I have given some thought to that question, and I think there are certain characteristics of an industry which might naturally lead to the development of a basing-point method which would be favorable to the existence of a basing-point method.

A. (Continuing.) I would classify these characteristics
42986 or features that would be favorable to the existence of the basing-point method under three heads, certain characteristics of the product, certain characteristics of the producers of the product, and characteristics of demand. As to characteristics of the product, I think that a standardized product and a heavy product, reasonably or moderately heavy and bulky product; under the character-

ities of the producers, when there are a limited number of them, when they are scattered geographically, when they are independently owned, and when they have high overhead costs, I should think as to characteristics of the demand, inelasticity of demand. Now, given that combination of factors, I think that combination of factors would be favorable to the existence of a basing-point method.

Trial Examiner Norwood: How will the overhead costs enter into it?

The Witness: If you did not have overhead costs, Your Honor, you would then—all of the costs of the business would be directly attributable to every individual unit of the product of the industry. Under those circumstances sellers would be less willing to accept a lower price for some units of the product than for others, but under a condition of overhead costs you have a distinction between the average cost, over-all cost, and out-of-pocket costs, and it therefore becomes not only possible but very natural that a seller,—for a seller to sell some of his goods on that
42987 basis; some, I might emphasize, of his goods on the basis of out-of-pocket costs. Then there is one other reason I include that, and that is a highly overhead cost creates the pressure for volume or certainly increases the pressure for volume.

Trial Examiner Norwood: Now, you say that condition would tend to bring about the employment of basing point prices or delivered prices.

The Witness: I say that this combination of factors would tend to bring it about, no one.

Trial Examiner Norwood: Selling on delivered prices?

The Witness: Selling on delivered prices.

Trial Examiner Norwood: Was that the question?

Mr. Bond: By the use of basing points.

Trial Examiner Norwood: Basing points, yes.

Go ahead.

By Mr. Bond:

Q. Now, turning to the other elements: You spoke of a standardized product here. Why did you include that among these elements?

A. Well, if you did not have a standardized product but did have a number of the other characteristics, then I would expect to find freight absorption, but freight absorp-
42988 tion of a sporadic sort. Perhaps I could illustrate that by saying we have a furniture manufacturer,

perhaps located in Grand Rapids, who is attempting to sell furniture in a distant market, I will say Texas, and suppose there were another furniture manufacturer nearer to the Texas market than the Grand Rapids manufacturer. I think it would not be surprising if the Grand Rapids manufacturer meeting the competition and fearing that he was going to lose the sale on, let us say a particular davenport, would say to the prospective buyer, "Well, I will pay half of the freight or perhaps I will pay the whole difference between the freight from Grand Rapids to the point and the freight that you would have to pay from this other place." However, as I say, that would be a sporadic sort of thing, and it would not tend to become regularized, I think, because the product is not a highly standardized product. There is, after all, some difference between these two davenports. When you have the product almost identical in quality then that is more favorable to the setting up of more regularized sort of freight absorption.

Q. Now, your second of these elements was that it be a heavy product. Will you explain the significance of that?

A. Well, approaching it from the negative side again, if it were not a heavy product but very light then I would expect that you would find the postage stamp principle of prices, namely, the same price prevailing in any part 42989 of the country or possibly some very large division, such as one price east of the Rockies and another price west of the Rockies on the ground that it did not make much difference one way or the other. On the other hand, there is an interesting point here that if your product were extremely heavy, so heavy that it is impractical to move it any substantial distance, it would be just almost physically out of the question to move the product from one market area away over into another, then I would not expect to find the basing-point method, either, and so what I have in mind is that a degree of bulkiness and difficulty of transportation lying between these two extremes would seem to me to be favorable to the existence of a method of the kind.

Q. I want you to emphasize for us this necessity for having a heavy product. Have you in mind at all the question of transportation costs?

A. Yes. It is all a relative matter of the value of the product and the transportation costs and if the transportation costs were extremely high relative to the value of the product, then it would preclude a method of this kind.

For example, I might add I think an example of the sort of thing I have in mind here would be sand or gravel where it is just out of the question to transport it a great distance.

Q. You mean that was an example of a thing being too heavy?

A. Yes, or articles like stationery, fountain pens,
42990 or things of that kind would be an example of the other extreme. This would lie somewhere between.

Q. Now, you also list the fact that there should be relatively few producers. Why do you include this as one of the elements?

A. If there were a very large number of producers, and I mean by that thousands or perhaps millions of them, as it is assumed under the conditions of perfect competition, then I would not expect any one of them to take into account the effect of his action upon the market, and his tendency therefore if he wanted to sell a larger amount would be merely to press upon the market in which he was operating regardless of the consequences.

Q. Now, you also referred to the matter of the location of the various producers in relation to markets.

A. That is, that they were scattered relative to markets?

Q. Yes. What was the importance of that element?

A. I include that because if you did not have it, if on the contrary you had all of the producing capacity of the country concentrated at one place, then I would expect to find a uniform f.o.b. plan with the lowest price prevailing at that producing center, and delivered prices rising as you proceeded away from that center. Under those circumstances I would see no occasion for a basing-point method. Obviously you could not—in one sense you would have one basing point, and there is no producer located
42991 except at the basing point which becomes a contradiction of terms.

Q. And why did you include the independent ownership of the different plants?

A. Well, if the different plants were not independently owned, if you had them all owned by one great corporation, then I would expect that corporation to direct its individual mills to supply all of the demand from the nearest mills. In other words, under a system of monopoly that is what that would be, one grand monopoly of an industry, would not expect to find a basing-point method of pricing prevailing.

Q. Then the last of the seven would be the inelasticity of demand. Why do you include this as one of these factors?

A. Because if the demand for the product were highly elastic that would be one reason that would encourage a manufacturer to get the increased volume which he desired under this overhead cost of the high overhead cost phe-
42992 nomena, to get that increased volume from his own immediate market by lowering price. When, however, the demand is relatively inelastic that is not open to him, and so he turns to the alternative of selling in the more distant market; that is, may I add, that that method is not as readily open to him as it would be under an elasticity of demand; or condition, may I correct that: under a condition of elasticity of demand.

42994 Q. If we assume, Professor, that each producer has found the present method of marketing as described in this long hypothetical question is in his individual self-interest, would that be an adequate or inadequate explanation of the continuance of such method of selling by the independent action of each producer?

A. It would, in my opinion.

Q. And do you, as an economist, regard this method of selling as a natural and reasonable method of marketing?

A. For an industry of this kind, I do. I mean by that an industry having the natural basic characteristics of this industry.

Q. Now, assuming that cement is generally sold at delivered prices and that one manufacturer abandoned the practice and sold his cement exclusively on a uniform
42995 f.o.b. mill basis, and that other competing manufacturers continued their practice of meeting delivered prices in various markets, what would be the economic result to the manufacturer making the change?

A. Well, the first result would obviously be that he would lose his freight absorbing sales, and by definition would stop at that point, which means that he obviously has reduced the volume of his sales and that might have the effect of raising unit costs, and so on. However, if at the same time that he reduced, that he changed the method of marketing, he also reduced the price that he might con-

ceivably exclude some distant sellers who would otherwise sell in this market and who might well discourage some competitors who are selling in this market in a desultory sort of way. However, these latter results are problematical since by definition he would lose his freight absorbing sales and would perhaps gain something on the side of excluding some of the competitors from his market. I think that it is reasonable to assume that he would be likely to lose by that.

Q. And how might this affect this unit cost?

A. That would reduce volume; a reduction in volume is likely in an industry having large investment to mean increases in unit costs, particularly in an industry in which there is unused capacity.

Q. Now, assume that a new mill should be built and instead of conforming to the existing industry mar-42986 keting practice, as described in this long hypothetical question, it is sold exclusively on a uniform f.o.b. mill basis while other competing manufacturers continued their present marketing practice, what would be the economic result to the new mill?

A. Well, I think the result to the new mill would not be as advantageous as to follow another method that would be quite natural. I think it would be most profitable for a new mill under those circumstances to accept the prices that were prevailing in the market at the time that the mill was built. In other words, it would accept the position of a non-base mill and by so doing it realizes upon its natural advantage of location.

Q. Do you as an economist consider that this advantage of location is something that belongs necessarily to the buyer of cement, or is it something that may also be availed of by the seller?

A. Oh, it obviously applies equally to the seller as to the buyer. In fact, I think the term is perhaps more commonly used when applied to a seller who finds an advantageous location for his plant or his place of business.

Q. Taking this method of marketing as described in the long hypothetical question, could the continuance of such pricing method be the result of the independent actions of the various producers?

A. Yes, I think it could be.

42998 Q. Professor, do you consider that the method of selling described in the long hypothetical question in this industry restricts competition in price?

A. No. As I have said before, I think there is no logical difference between competition in price and any other kind of competition. But if the question directs attention to the price side of the equation, I will say that I do not think it is possible to generalize upon the effect of this method of marketing upon price as it applies to all possible situations.

The method of marketing clearly has an effect upon the form of competition, but— For example, under this method of marketing the restriction, the restriction upon the freedom of activity of any seller,—that is to say, the competitive pressure upon any seller is in the fact that when he attempts to raise the price he makes his home market, his nearby market, more attractive to distant competitors.

That will quite possibly have the effect of inducing
42999 competitors or encouraging competitors who are not now competing in this market to do so.

Not only is it likely to affect the—not only must he consider that any attempt to raise his price,—I am speaking of base price,—any attempt to raise his base price will make his market attractive to competitors who were not previously selling here, but there are presumably those selling in this market on a freight-absorbing basis who are rather indifferent about the market. That is because they are absorbing so much freight, and it becomes a matter of almost indifference as to whether they get the business or not. They may want to keep their hand in, so to speak, and keep in the market.

Now, if he attempts to raise this base price, that attitude would change and they would become more actively interested in soliciting trade, and he must face that fact.

So the competitive pressure under this method, it seems to me, is in the desire of the local mill to retain for itself as large a proportion of the profitable nearby business as possible.

Now, then saying this I do not mean to imply that there would be no price competition under the opposite method; that is, under a uniform f.o.b. method. Under that method

each competitor, each mill, in fixing its base price would have to consider that as it raised this base price it would be restricing the area in which it would be the sole seller.

So you have two forms of competition. Under the
43000 one there is the desire to retain as large a proportion of the nearby profitable business as possible. Under the other you have a desire to keep the area in which you will be the sole seller as large as possible. Which of these two is the stronger in any particular case, as I have said, I do not think it is possible to predict; but I can say that I do not think that this present method has any necessary effect of restricting competition, and in my opinion it does not have the effect of restricting competition at all, generally speaking.

Q. Now, still considering this method of marketing as described in the long hypothetical question, how, in your opinion, does it affect the costs of producing and distributing a product?

A. Well, I suppose any competitive method of selling involves some costs of distribution which might be regarded as wastes of competition, to use a common phrase. In that category I would place cross-hauling, which is a feature of correlary of this method of selling, which I have regarded as one of the several so-called wastes of competition, or costs of competition, and its justification would have to rest upon the effectiveness and desirability of the system,—of the competitive system as a whole. And frequently I believe in attempting—it would be true that in attempting to remove some of these costs of competition, while one might gain a temporary reduction in costs, the long-
43001 run effects might very well be to lead to increased costs in other directions,—unbalanced, I think. In my best opinion, the balancing of the costs of cross-hauling, on the one side, with the advantages of the day by day and continuous competition, on the other side,—I do not believe that taking of all that into account,—that it has the effect of increasing the costs of competition.

Q. And if these costs of competition you have referred to were eliminated, would there be any assurance that that would be passed on to the consumer?

A. No, there would not. Not all of the costs of production or distribution go directly to the consumer, and the elimination of some costs would not necessarily result in the lowering of price to the consumer, especially if that

lowering of the cost is brought about by means of limiting or modification of the method of competition.

Q. Now, still taking this method of marketing as the long hypothetical question describes it, how effectively, in your opinion, does this method of marketing act to keep prices down to a reasonable margin above costs?

43002 Mr. Bond: Will you change the word to "would"?

Trial Examiner Norwood: "Would tend."

Mr. Bond: Yes, "would tend to keep."

A. I think on the basis of the assumptions that one can conclude that there is a rivalry between sellers to gain the patronage of buyers, and that that rivalry would have the effect of keeping prices down to a reasonable correspondence with costs.

By Mr. Bond:

Q. Now, turning to a somewhat different subject, does an economist expect that a manufacturer in competing with other producers will or will not exercise a degree of self-restraint in his pricing policies?

43003 A. Well, that depends upon the number of buyers and sellers, particularly the number of sellers, who are involved. If you are dealing with a very large number of sellers, as, for example, the wheat growers, then I would not expect them to be restrained by considerations of the effect of their actions upon the market. I should expect a wheat grower to determine the amount of wheat that he would produce, the amount that he would sell, where he will sell it, at what price he will sell it, on the basis of his own individual self-interest at the moment. But when you have very few producers in an industry, a limited number, the situation becomes different.

Now, as each one tends to feel a decrease, responsibility for the market, so to speak—that is to say, that he has a continuing interest in the market, and he realizes that what he does may affect that market in which he is going to have to live.

So while I would expect that a wheat farmer would not be so restrained, I would expect, let us say, a large dairy farmer, who is selling to a local market, to be so restrained, and I would expect, let us say, an automobile manu-

43004 facturer to be so restrained.

Q. Or a cement manufacturer?

A. Yes, under the conditions as stated in the assumptions.

Q. Now, will you give us a little more fully your reasons for this conclusion?

A. Well, when you have a very large number of buyers and sellers the effect of the action of any one of them upon the whole market is relatively slight,—would be negligible. When you have a small number of sellers, then each one must consider the effect of his actions upon the market and upon the probable reactions of his competitors. He takes that into account, therefore, in making his decision.

That is one of the distinctions between assumed conditions of perfect competition and conditions of imperfect competition.

Q. Well, now, if such self-restraint in pricing policies is exercised by a producer, would this in itself, to you as an economist, justify an inference of collusion?

A. Oh, no. I had reference to the individual deliberate decision of the manufacturer, such a decision as, well, any manufacturer, where there is a limited number of producers, would have to make a decision as to whether he is going to reduce his price. He would have to take into account the fact that very probably his competitor would have to reduce his price, and he would be where he was before.

43005 Q. Now, if such producer does not exercise such self-restraint, but throws it to the winds, what are the effects that you, as an economist, would expect to follow?

A. Well, assuming that we have—talking about manufacturing industries, which have capital investments, therefore overhead costs and out-of-pocket costs—if there were no such self-restraint on the part of the individual sellers in the market by that method, I would expect that prices would be carried down to a point that would be below the costs of production. Business men refer to that as a ruinous competition, a demoralized market.

Q. Now, let us turn to this case, Professor: Assuming that a non-base mill is a mill that has adopted no mill base, but that sells all of its product at the lowest delivered prices quoted by any competitors, do you as an economist consider that all sales of the non-base mill are discriminatory?

A. Well, there is a number of definitions of discrimination. But even if we take the definition of discrimination as being the selling of a product at such prices as would yield different net returns to the sellers,—even if we take

that. I do not think that you can say that all—then probably under those circumstances most but not all of the sales of a non-base mill would be discriminatory. I say "not all" even in that case, because a number of the sales
of a non-base mill are obviously made in the same
43006 town, and those prices are the same, and there is
obviously no discrimination in that case.

It is also possible that on one side of a non-base mill, if it is meeting competition principally from the other side, then on the side away from its nearest competitor prices would be in line, so that equal mill nets would be received. So even under that definition they would not all be discriminatory.

But I may add, I think, that that definition of discrimination is too restricted and is unsatisfactory for an economist. An econo.. st ought to be concerned with the causes of discrimination and the consequences of discrimination. And it seems to me, therefore, that he should be—he should take this into account, that discrimination that is economical discrimination is discrimination that is not to be explained on the basis of meeting of competition. Secondly, that it is competition which does affect the relative position of competitors; that is, of the buyers of the product, so as to give one competitor an unnatural or an unwarranted advantage over another.

Now, by very definition the sales of a non-base mill are sales that are made to meet competition; that is, they are accepting the prices that someone else has initiated. And also understand that the competitors of the buyers of cement in different towns are ordinarily not in competition
with one another. Competition among the buyers of
43007 cement exists as between the buyers in a certain
town, in a certain place, and this method of selling does not lead to variation in price as to them.

Mr. Wooden: Now, Your Honor, I move to strike the last question and answer as getting into the factual field, on which the witness has not shown any competency to testify.

Trial Examiner Norwood: Motion is allowed as to striking that part which states that buyers in different towns are
ordinarily not in competition with each other.

43012 By Mr. Bond:

Q. Assume that a non-base mill, Professor, sells to one dealer in Louisville and to another dealer in

Cincinnati at two different prices, under those circumstances what would be the economic effect of such sales upon the two dealers?

Trial Examiner Norwood: Discuss that under one assumption that they are in competition, and on the other that they are not.

A. If the two dealers, one located in Louisville and the other located in Cincinnati, are not in fact selling to the same customers, then I should say that no injury to one of these dealers by virtue of a difference in price that
43013 existed between—that was paid by the two dealers.

Trial Examiner Norwood: Not soliciting sales from the same people.

The Witness: Yes, yes, which I assume would be the fact in this case, but perhaps I am mistaken.

Mr. Wooden: I move to strike the answer as not responsive. He did not ask the question whether that was discrimination, but whether any injury would be done.

Trial Examiner Norwood: Motion denied.

By Mr. Bond:

Q. Did you finish your answer? Would you like to have it read?

A. I would like to have the question read, and the answer because this raises a question whether the word "discrimination" was used.

Trial Examiner Norwood: Read it.

(Question and answer were read.)

By Mr. Bond:

Q. Professor, if instead of saying "different prices" in that question I had said "different mill nets," would your answer have been the same?

A. Yes, sir.

Q. Now, would you consider such sales under such circumstances to be discriminatory?

A. In my definition of "discriminatory," that is,
43014 the concept that I have indicated I think is economically significant—and I may say parenthetically that I am certainly not posing as an authority on the legal definition of discrimination, but I have indicated under what circumstances I think that form of discrimination is economically significant. Under those—pardon me. My parenthesis was so long that I lost the question.

(Question read.)

A. No, not in that sense.

Q. Now, when a mill, Professor, a base mill, shrinks its mill net in order to meet the delivered price of another producer, such sales being sometimes referred to as freight-absorbing sales, what are the economic effects, in your opinion, of such freight-absorbing sales?

A. The economic effect—one economic effect is obviously to enable the mill that engages in this practice to sell a larger quantity of its product. It is reasonable to assume that that would often result in lower unit costs of production.

Another economic effect would be in creating several sellers at the one market, at least creating one more seller at the same market, and thus providing competition, rivalry between the different sellers for the patronage of the buyers at that point.

43018 Q. Professor, where the sales of a base mill gave one mill net to a customer relatively near the mill and a lower mill net on a sale to a customer in a more distant market, where they had to absorb freight, would you as an economist consider that, from the standpoint of an economist, such sales were constituted discrimination?

A. Now, that asks to answer the question by reference to the concept of discrimination, which I mentioned a moment ago, that is, that it seemed to me economically significant. The discrimination was a difference in price, where the difference was not to be explained by the meeting of competition, and where the difference in price had an effect of giving an unnatural and unwarranted advantage to one competitor over another.

Now, the freight-absorbing sales, it seems to me, by definition, are of the sort described in my first condition; that is, that they are made to meet competition. A freight-absorbing sale is a sale in which the seller does not initiate the price, but meets the price, and therefore, from the point of view of that concept of discrimination which I am using, that would not be discrimination.

43019 Q. Now, Professor, do you as an economist consider that these sales of a non-base mill and these freight-absorbing sales of a base mill lessen competition?

A. The term "lessen competition" seems to imply lessening it from some state of affairs that had previously existed. It seems to me there is a time element there. If

that—since I understand from the statement that this method has been used for some time, it is difficult to apply that test.

If one looked at the—took another test, I suppose one might take "lessening of competition" as meaning yielding less of competition than some other method, then I would consider that—then I would compare the method and degree of competition that is likely to exist under this method with the method, amount and degree of competition that might exist—would likely exist under the other feasible alternative, which is the uniform f.o.b. plan. And when I do make that comparison I come to the conclusion that while the form of competition is changed, I see no reason for thinking that the degree of competition is reduced and that competition is lessened, if that is the meaning of the term "lessening of competition."

43020 Q. Well, now, still considering these freight-absorbing sales in determining whether such freight-absorbing sales were made in good faith, to meet competition, for what would you look, as an economist as the indicia of good faith?

A. It seems to me good faith in meeting competition implies that a seller quotes a price as low as is necessary in order to meet a price that has been initiated by some other seller when it is profitable for him to do so by usual normal business tests.

Q. Now, going a little further, but on the same general subject, Professor, if you were examining an industry to determine whether competition existed in the industry, and assuming that it is such an industry as we are considering here, for what elements would you look as indicating the presence of competition in the industry?

A. Well, a continual effort to improve the quality of the product, improve the service, reduce costs of production, the existence of advertising, selling efforts—in fact, most any efforts that would be legitimately made by the business to induce and to attract the patronage of consumers, of buyers, a continual watchfulness of competitors' prices, and a willingness—an apparent willingness to adjust one's announced prices to meet any changes made by competitors' prices, and perhaps occasional shading of the price, or secret price cuts—I would consider those as among the symptoms of the existence of competition.

43021 Q. Now, would improving the quality be such an indication of competition?

A. Improving the quality of the product? Yes, I think improving the quality of the product would be an evidence of competition, although it can be said that a monopolist might also have an interest in improving the quality of the product. In the event that the demand were clearly an expansible demand, that is, if you were in the situation in which he, by continuous improvement in the quality, increased the total amount of business, then I would imagine that even a monopolist would have a reason for doing that.

Trial Examiner Norwood: He might do it as against some other competitor?

The Witness: Yes. However, many of the improvements that are made in the American industries could not be explained in that way, but rather have to be explained on the basis on the assumed desire of one seller to attract a larger proportion of the existing business from the other sellers. That, I believe, is the more potent force in bringing about improvements in the product, and therefore I say that continuous improvement in the product would give some indication or suggestion of the presence of competition.

By Mr. Bond:

Q. Now, how about the rate of return on the investment?

43022 A. Yes, I think that is an indication of the existence of competition; that is, a reasonable rate of return, a rate of return that yields normally not more than a normal reasonable profit.

43023 Q. Professor, is there any principle that economists recognize as to the price of a homogeneous product in a market at any one time?

A. Yes. It is established and well accepted that the price of a homogeneous product in a market at any one time would be a uniform price.

Trial Examiner Norwood: Uniform, or tend to uniformity?

The Witness: Well, the natural practice would tend to uniformity.

Of course, an amendment might be—well, that except

for such times when a change in price is being made, there would be an instant of time in which they would be out of line.

By Mr. Bond:

Q. And except for such a time of change, would there or would there not be a uniformity in price?

A. Yes.

Q. There would?

A. Yes, there would.

Q. Now, Professor, assume that cement is a homogeneous commodity; that it is usually sold at delivered prices; that it is a heavy and bulky commodity, so that freight is an average of approximately 25 percent of the delivered price; that there are a number of manufac-
43024 turers offering to sell at each destination; that the buyers, including dealers, contractors and governmental officials, are well informed on market conditions and prices; that each manufacturer is constantly and immediately informed by his salesmen and customers of the prices being quoted by all of his competitors; that the capacity to produce by the manufacturers is in excess of the current demand.

And assume that there is no agreement or understanding between the manufacturers as to the prices they will charge, but that each manufacturer determines his own price independently for himself, and that such prices are the result of free competition.

Now, would you under those assumptions expect the openly quoted prices at any destination to be generally uniform or different?

A. Yes, I would expect them to be generally uniform.

My answer would have been the same if you had merely assumed an indentical product and informed buyers.

Q. Professor, assume again that cement is a homogeneous commodity; that it is usually sold at delivered prices; that it is a bulky and heavy commodity, so that
43025 freight is an average of approximately 25 percent of the delivered price; that there are a number of manufacturers offering to sell at each destination; that the buyers, including dealers, contractors, and governmental officials are well informed on market conditions and prices; that each manufacturer is constantly and immediately in-

formed by his salesmen and customers of the prices being quoted by all of his competitors; that the capacity to produce by the manufacturers is in excess of the current demand; and assume that the prices openly quoted by different manufacturers at the same place and time are consistently uniform, will you state whether the fact of such uniformity, to you as an economist, justifies an inference that such prices are the result of collusion or agreement?

A. I do not see how an economist could draw the inference of collusion or agreement from those assumptions.

Q. Now, when you testify that as an economist you would expect a homogenous product to sell at a single price at any one time, to what does the word "price" refer, to the delivered price agreed upon between the buyer and seller, or to the amount netted at the mill after deducting freight from the amount named in the transaction?

A. In these assumptions it applies to the delivered price. The price applies wherever the—wherever the sellers are making offers—several sellers are making offers to buyers and offers to in fact deliver a product, and the buyers are comparing the values of the goods of 43026 fered, and the prices made by the several prospective sellers at that place, I would say the prices would have to become uniform.

Q. Now, will you state whether or not you would expect such uniformity of price for a homogenous product irrespective of the method of marketing employed?

A. Yes, growing out of the identity of the product and the assumption of a group of informed buyers.

Q. Now, will you state whether or not, in your opinion, the fact that prices are known to competitors is a factor that has any influence upon such uniformity of price in the case of a homogenous product?

A. Yes, that would hasten the bringing about of the uniformity of price. The basic factor, however—as I have said, the identity of the product and the fact that the buyers are well informed and are seeking to preserve their own self interest would be the basic factor; but prompt knowledge on the part of competitors of one another's prices would hasten that result.

Q. Now, turning back once more to the long hypothetical question that described the method of marketing, in the case of cement sold in the way in which that question

describes it, where, in your opinion, is the market for cement?

A. The term "market" has a great many meanings. When it is used as you have used it here with reference to a place, then I would say that the market is where the several sellers, prospective sellers, do make rival
43027 offers to a group of buyers, or they do in fact agree to deliver the product, and where the sellers compare the values of the goods offered by the different—where the buyers compare the values of the goods offered by the different sellers, and the prices. And that becomes just a question of fact as to where the market is under those tests.

Now, conceivably the market should be at the point of production. If you had the situation in which all or practically all of the producers in a given industry were located at the same place, buyers came to that place to buy their goods, and at that point compared the values, then that would be the market.

Secondly, you could have—you can have a central market where producers of a product ship their product physically, the physical product, to one certain place, the buyers resort to that place, and at that place they compare the offerings of the different sellers, and determine their purchase, decide upon their purchase, the price emerges, then that would be the market.

But in the method that you have described to me, the place where the sellers do make rival offers, and where the buyers do compare values, and the price is actually at the point of delivery, I would say then in that case that is the market.

43028 And, therefore, you have as many different markets for a product of this kind—you have as many different markets as you have points of delivery.

Q. Then, just to make it perfectly clear, if we assume that a number of manufacturers through their salesmen are soliciting orders from a dealer located in one town, and this dealer ultimately buys from one of those companies so soliciting, where, in your opinion, is the market?

A. In that town where the offers were made, as of that town. Comparison of values took place there.

Q. Now, when you testified that an economists expects that a homogenous product will sell at a single price in any one market at any one time, in what sense were you using the word "market"?

A. In the sense of "market" as I have defined it, a market where sellers do actually agree to deliver products, where the buyers compare the values of the products. And in the case of—I think, as I have said before—I do not want to repeat—the case such as you have described, that is the point of delivery under these assumed facts.

Q. Now, turning to a different subject, Professor, what do you as an economist mean by the term "price rigidity"?

A. Price rigidity, unless the term is qualified, refers to two aspects, one to amplitude of variations in price, and the other to frequency of variations. Price rigidity would presumably mean a relatively small variation as
43029 to amplitude and relatively infrequent in variations.

Q. Well, what, in your opinion, are the economic factors that in a competitive industry and absence of collusion tends to cause relatively rigid prices?

A. Well, one common factor is custom. Another one is the fear of retaliation. It comes under this concept I mentioned previously, of the natural self-restraint of individual business men. If there are limited—if there be a limited number of manufacturers engaged in the trade, then I would expect that any one of them would hesitate to—would be discouraged from making price changes from the knowledge that—almost certain knowledge that his competitors would make the same price changes, and therefore he will gain no competitive advantage. That is the determining factor, and I suppose tends to price rigidity.

Then there is a third factor that I think is important, namely, the fact that each seller in a manufacturing industry, each manufacturer in a manufacturing industry, can control his own volume of production, and he can adjust that volume of production to the variations in demand and conditions of the market. So the result may be that the manufacturer determines upon his price first, and then adjusts the amount that he will produce to the amount that he can sell at that price. The consequence of that is that, unlike the situation in the staple agricultural
43030 products, the very price change results from the deliberate decision of some individual business man. Now, since there is a limited number of those individual business men, and it does require a deliberate decision, then it seems to me it is quite natural that there would be

fewer of those changes under those circumstances than one might expect under the agricultural products.

Trial Examiner Norwood: You mean the demand does not enter into this?

The Witness: No, sir; I do not mean that demand would not enter into it. The manufacturer would have to consider the demand, but he considers it simply as one of the elements that would have a bearing upon his decision; whereas, in the case of agriculture the farmer in accepting a certain price for wheat does not consider what affect this will have upon the market, nor does he consider the prospective demand for wheat, and just accepts the price for wheat.

By Mr. Bond:

Q. Now, turning to this particular industry, assume that in the cement business most companies have outstanding large obligations on specific job contracts, and that all of these contracts contain clauses protecting against decline in price, so that if the manufacturers' commercial market price at the point of delivery declines they are forced to reduce the price on contract cement that 43031 they have agreed to deliver for a long period ahead, would that factor have any influence, to your mind, in creating a tendency toward price rigidity?

A. Yes, I think it would be a discouraging factor to manufacturers contemplating a price decline, one that would have to be considered along with all other considerations in arriving at the decision.

Q. Now, assume that the cement manufacturers, most of them, have on their books contracts for delivery in the future over a period of a year or more large quantities of cement, the contract stipulating maximum price, so that in the event of an increase in the commercial price manufacturers do not get any advantage at all from that increased price on their contractual obligations, would that in turn, in your opinion, have any influence on the question of rigidity of price?

A. It would be another factor, like the other one, that would tend to discourage increase in price, and would be taken into account along with the other factors. I think it would have its effect in that direction.

Trial Examiner Norwood: Would it discourage a decrease?

The Witness: I understood that if the—I am perhaps getting these two confused.

Mr. Bond: The question referred to the effect of an increase in price.

43032 Trial Examiner Norwood: In this contractual situation you asked him would that discourage increase in price, and I asked him if it would tend to discourage decrease.

The Witness: No, I do not think that it would.

By Mr. Bond:

Q. Now, assume that in the event—pardon me:

A. I am simply adding the other one would discourage decline in price; this one would discourage an advance.

Q. Now, Professor, assume that in the event of a price advance it is the custom of the industry to give several days' notice, broadcast to the trade the effective date of such price advance, and that coupled with that it is also the custom to permit dealers to place orders within that area for any quantity of cement for which they will take delivery within 15 days thereafter, would those factors have any influence on the question of relative price rigidity?

A. Yes. I think I would answer that the same as the other two questions, that it would have the effect of discouraging it, because the price advance would not be effective as to a considerable amount of business, that in the absence of that practice they might be expected to

43033 get on the higher prices.

Trial Examiner Norwood: Now, wouldn't that stimulate trade?

The Witness: It might hasten the making of purchases, that is all. People who might buy two weeks hence buy now.

By Mr. Bond:

Q. When I asked you, Professor, if it had any influence on rigidity, you said yes, it might encourage it, I think you said—

A. Might discourage the price advance—discourages price change and encourages price rigidity.

Trial Examiner Norwood: The fact that they would place orders for future delivery on the announcement of a price raise would tend to discourage price rigidity, is that it?

The Witness: You have got to give them the benefit of the advance right now, yes.

Trial Examiner Norwood: It discourages price rigidity or encourages?

The Witness: Discourages them from making the price change.

By Mr. Bond:

Q. Any price change?

A. Yes.

43034 Trial Examiner Norwood: It tends towards price rigidity.

The Witness: Yes. These practices taken together would discourage them from making the change one way or the other.

By Mr. Bond:

Q. Now, Professor, assume further that it is the custom in the industry to protect dealers on price declines on cement recently purchased, either in transit or just received, so that on such declines substantial credits have to be given on all recent shipments, would this, in your opinion, have any effect on the rigidity of price?

A. That would tend to discourage a price decline, because it makes it necessary now to conclude some business which had already been arranged on a higher price—becomes necessary to conclude that on a lower price, and therefore would be a discouraging factor.

Q. Now, assume that the prices of cement did not advance during a period of increased costs of production, would such price rigidity be consistent, in your opinion, with a condition of competition?

A. Well, if prices did not advance when costs are advancing, one considers the possible explanations.

One explanation is that competition is effective and that the number of prospective suppliers and their de-

43035 sire for business makes the price advance impossible.

Another one is that the sellers are not really aware of their own self-interest; that they sleep at the switch, so to speak.

And another possible explanation might be that the demand for the product was considered as being so highly elastic that any advance in price would tend to kill off the demand.

Now, in the case that you are describing I assume that cement manufacturers, like other business men, are reasonably aware of their own self-interest, and also I believe that the price—that the demand for cement—I think the assumptions have indicated that—the demand for cement is relatively an inelastic demand. And, therefore, the two of the three factors which might hold price advances under those circumstances in check are eliminated, and it would strongly suggest to me that the competitive factor was the one that was preventing the price advance.

Q. Now, assume that each producer has learned by experience that if he reduces his prices such reduction is certain to be met by competitors, would this fact have any tendency to produce rigidity in price?

A. It would have a decided tendency to produce rigidity in price, especially in an industry—in the case of a product for which there is an inelastic demand, be-
43036 cause there are only usually the two reasons for reducing a price, one that you hope to get a larger proportion of the existing business, and you will not do that if the competiter meets the price promptly, and the other is the elasticity of the demand; that is, there would be a larger total of demand, so that even with your existing share you would benefit.

Q. Now, assume that the results of price reductions at certain times in prior years, as during any price war, have shown that a price reduction by one producer may not only be met by other competitors but that they in turn quote a still lower price, would this have any effect on the rigidity of price?

A. Natural self-restraint of business men, to which I have referred before, and their regard for the market in which they were operating, would certainly create under these circumstances a restraining force upon them in making such price reductions, and that, of course, contributes to rigidity.

Q. Now, assuming the conditions in the industry to be as they have been stated to you in what we are calling the long hypothetical question, and assuming that during the period subsequent to 1933 the price of cement remained unchanged for a period of one year, does that fact of rigidity of price, to you as an economist, raise an inference of collusion?

A. I think the factors we have been discussing are ade-

quate to explain a failure of price to change over a period of a year. If you are faced with the fact that price
43037 has not changed over a period of a year, you have two conceivable assumptions, one that these natural factors that we have been talking about have been holding it in check, keeping it from changing, and another that there was collusion in keeping it from changing, and I see no reason on the face of it for assuming that a collusive agreement would be directed to keeping the same price.

A monopolist has no particular interest in maintaining the price the same all the time. He may have an interest in maintaining a high price, but stability of price is no more a characteristic of monopoly price than it is of a competitive price, in my opinion. That is a point that I think is sometimes overlooked. We seem to feel that a monopoly would keep a price the same at all times. But given any condition, changes in conditions of demand, it would be more profitable for a monopolist to change the price, and also there is a tendency for a monopolist to experiment around with price to fix the most advantageous one.

43038 Q. Then, specifically, Professor, so that I may be clear in understanding your answer, your answer to my question as to whether these facts would raise an inference of collusion, your answer is—

A. That they would not.

Q. Now, assuming these same conditions as to the industry, if during a period subsequent to 1933 the price of cement had remained unchanged for a period of five years, would that fact of rigidity of price, to you as an economist, raise an inference of collusion?

A. No, for the same reasons that I mentioned before.

Q. Apart from other factors, does the existence of high overhead costs in such an industry as this have any
43039 direct or indirect effect upon rigidity of price?

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Bond: May I change it, if Your Honor please?

Trial Examiner Norwood: Yes.

Mr. Bond: Make it read "in any industry."

43041 A. I think that the existence of overhead costs—and the higher they are the greater this tendency would be, of course—has an interesting effect. The first effect of high overhead costs is to create a situation in which ruinous competition might exist. Because there is

a difference between out of pocket costs and average costs, business men may get into a form of competition
43042 based on the out-of-pocket costs, which will be ruinous to all of them.

Now, that factor might seem to follow from that, that you would have widely fluctuating prices in a situation of high overhead costs, but in a situation where you have relatively few producers in an industry, and they recognize that very danger, then the tendency is for them to guard themselves against it.

And so, paradoxical as it may seem, you start out with an industry in which there is danger of such wide fluctuations in prices as will be ruinous has the effect of placing self-restraint upon all of the sellers in that industry and thus tends to create a degree of rigidity.

I believe that is an important factor in the tendency of prices in American industries generally.

By Mr. Bond:

Q. And to some extent it would be true if you have any overhead costs?

A. Oh, yes. Everything I have said arises out of overhead costs, and the higher the overhead costs the greater the effect.

Q. And if the overhead costs are substantial—

A. The effect would be substantial.

Q. And if they are high the effect would be still more high?

A. Yes.

43043 Q. Now, assuming that in the construction industry cement is one of the minor items of construction costs, and assuming that it has a relatively inelastic demand, would you expect the producers of cement to take the initiative in reducing the general costs of construction by reducing the price of cement?

43044 Trial Examiner Norwood: Objection sustained.

Mr. Bond: Now, if Your Honor please, I offer to prove through this witness, who is a duly qualified expert economist, that on the facts stated, on the assumptions stated, in his opinion he would not expect a producer of cement to take the initiative in reducing general costs by reducing the cost of cement.

Q. Professor, do you consider that a relatively rigid price of a commodity in itself indicates the presence of monopoly?

A. No, I do not. As I said a few moments ago, there are a number of other possible explanations of rigidity of price. I do not see how one, at least an economist, can infer monopoly—that was the word, was it not, monopoly—from rigidity, and the further point that I see no reason for assuming that a monopolist would favor a rigid—policy of rigid prices. In fact, I think that commonly a monopolist would do the opposite: He would vary his price from time to time in order to take advantage of the different levels of a market, or states of a market.

Q. Well, now, assume, Professor, that certain companies have each a number of mills, and that the territory in which each mill sells reaches to and contacts the territory in which another mill owned by the same company sells, and that a company operating such a series of mills
43045 has found it necessary to change its price base at each of its mills if it changes the price base at any one mill, would this have an effect on price rigidity?

A. Yes. Like a number of the other factors mentioned before, it would have the effect of discouraging a price change. The company might otherwise be willing to make a change in some one mill, but if it knows that it has to make a corresponding change throughout its whole area in which it operates it might not want to do that. That would discourage it from making the price change, and therefore would tend to cause overrigidity.

Q. I think in my question I said "and if the price base at any one mill is changed." I meant to say if the price base at any one mill is reduced. Were you answering the question in that sense?

A. Yes, sir; I really had that in mind.

Q. Now, in your opinion does or does not the fact that prices are known to all competitors have any tendency to create price rigidity?

A. Yes, I think it does have the effect of creating price rigidity. That is a subject that has attracted the attention of economists. It is an interesting one, because we assume that perfect knowledge of prices on the part of everyone concerned is one of the conditions of perfect competition; but it is also true that the perfect and prompt knowledge on the part of all of the sellers concerned may be a
43046 factor making for rigidity, because of the knowledge of any one of the sellers that the price change made by him will be known at once to all others and will be acted upon.

Q. Did you mean knowledge on the part of buyers or knowledge on the part of sellers?

A. On the part of the sellers.

Q. Now, Professor, are there any factors in an industry such as this which, in your opinion, tend to restrict price increases, besides the things that you mentioned?

A. Well, I think that there is—I do not recall that I have mentioned—restrict price increases, you say. At the moment I do not recall all the different factors that I have mentioned. I can't think of others.

Q. Well, how about the action of competitors at the time of an announced price increase?

A. Well, there is always a question as to whether competitors are going to follow in the price increase. You have two sorts of restraining factors—in the case of an individual manufacturer considering whether to raise his price or to lower it, if he thinks he is considering the reducing of his price, he considers the fact that practically there is the probability that competitors will follow him; and if he is raising the price, there is the uncertainty as to whether they will follow him in the advance in price, both of which are discouraging factors to make the
43047 change.

Q. Let me put this question, Professor: What effect, in your opinion, would a price advance have on the amount of competition in the mill's immediate market—

A. We are speaking of the base price in this particular industry.

Q. That is right; price advance in the base price.
43048 What effect would it have on competition, and what possible effects would it have on the profits?

A. I think I have said before in discussing the factor of competitive pressure upon price that an advance in the base price of the mill has the effect of making the home market, nearby market, more attractive to distant competitors, and that would likely have the effect of increasing the amount of freight absorbing sales made by competitors in that territory on the part of—in the first place, on the part of distant sellers who are not now selling in the territory at all and would be brought in by the advance in price; and, second, by the encouraging of those who are selling in this market to make more strenuous efforts to increase their sales.

Q. Now, would those facts, to you, exercise a restraint over price advance?

A. Oh, yes, decidedly. That is, I think—well, it is the form in which competition takes competitive pressure upon a base price, preventing it from raising a price.

Q. Now, considering an industry such as cement, in which you have stated that of necessity you have what the economist calls imperfect competition, in your opinion would a condition of price rigidity in this industry if it existed indicate the absence of competition?

A. No, I think it would not. It would indicate the results of a condition of imperfect competition. Im-
43049 perfect competition, as I have said before, is not an absence of competition; it is simply a form of competition. In some cases it can be an even keener form of competition than perfect competition.

Q. Now, you spoke a few moments ago, I think in answering a question of the Examiner, about production of a commodity that was not produced with close relation to the estimated demand. Did you have a particular commodity in mind that you could give us as an example?

A. Yes. I think you can take the illustration of wheat again.

Q. And cement which is, we will assume, largely produced on order, with only a relatively small stock carried, would that be an instance of such production on demand, or something different?

A. I think it would be an illustration of it. That is production closely adjusted in point of time to demand.

Q. Is it possible to adjust production of wheat to anticipate a demand in the same way that you can adjust the production of cement?

A. No, quite definitely not. I think there is a characteristic of manufactured products generally that puts them in contrast with staple agricultural products. In the case of the agricultural products you have a production which has taken place without very much regard to the
43050 actual—specifically to variations in demand for the product.

Mr. Wooden: Are you through?

The Witness: No, I am not.

A. (Continuing.) And you have, therefore—the farmers of the country are faced with the problem every year of marketing a harvest which is here, and which is produced, and they can't do anything about it, and, therefore, put that against a relatively inelastic demand for the agri-

cultural staples varying supply coming against an inelastic demand, and you have widely varying prices from year to year.

Now, in the case of manufacturing—I am not speaking necessarily of this particular industry, but of industries generally—in manufacturing the rate of production can be adjusted by individual producers to the possibilities of sale of that product. And when the manufacturers, taken as a group—I mean not acting individually but the whole multitude of them—see that the supply of the product is pressing upon demand, making it impossible to sell the amount that they are producing at a given price, then they slow up the rate of production. So in that fact of the control that manufacturers have of the amount that is being produced it becomes possible for them to adjust that amount to the demand, and therefore price does not vary as much as it would in a situation in which their production is uncontrolled.

By Mr. Bond:

4305f Q. Now, would you say that where a product is thus produced to meet the immediate demand that this is a factor that has any influence on price rigidity?

A. Yes, it tends to create that, for the reasons that I have indicated.

Manufacturers would—for a price to change, manufacturers must deliberately decide as a matter of policy to change the price. Farmers do not do that. Farmers bring their products to the market, and there is an automatic emergence of price from the supply which impinges upon an existing demand. In such an uncontrolled sort of thing you are likely to have a variable price.

Q. And in the case of manufacturing, such as this, the result is the opposite?

A. It is likely to lead to less frequent change, because of the factors I have mentioned.

Q. Now, assume that cement can be and is produced at any time in the year, and that its production period is about 30 days, whereas an agricultural product is produced at one season common to all producers, and that season comes around only once a year, does this factor of time for the production period have any influence in creating a control of supply?

A. I think decidedly it does. It is one of the marked contrasts between agricultural staples and manufactured

goods that the agricultural staples are produced on
43052 an annual cycle. With all of the efforts that the Department of Agriculture may make to inform farmers about the amount of potatoes that are being planted, the fact still remains that that information is not available until the potatoes are all planted, and then you have a supply which was not planned by anyone, and no one had any—even the individual producers could not adjust their production to the demand or to the amount of potatoes produced, and that harvest impinges itself upon a rather fixed demand of the product, and naturally from year to year you have widely varying prices.

Now, in the case of manufacturing, even though the productive process were longer than you have described it, it still is true in the manufacturing industry that nearly every day some manufacturer somewhere is starting the productive process, and if he feels that the supply is pressing too heavily upon the market he will produce less of the product, so you get a continual adaptation of the supply to the demand as a result of the decisions of this multitude of producers and manufacturers.

Q. Now, assume, Professor, that cement is usually sold at delivered prices, and that from past experience manufacturers have learned that a reduction in price by one manufacturer is immediately met by others; that he gets little or no increased volume, but does get a lower price for his product. Under conditions of free competition,
would you expect each manufacturer under the as-
43053 sumed facts to make successively lower prices?

A. No, I would not. Each manufacturer would have to consider—would consider the consequences of his act and thus would refrain from the sort of price policy that you have described.

43054 Washington, D. C.,
Thursday, September 5, 1940.

43056 CLARE E. GRIFFIN, thereupon resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Bond.

Q. Professor, how would you define the phrase "inelasticity of demand"?

A. I would define it first by describing its opposite, elasticity. Elasticity of demand refers to that quality of demand by which the demand increases as the price decreases and decreases as the price increases; in other words, an inverse relationship between price and demand. Now, all products have some degree of—that is, have this quality to some degree.

43057 When the demand for a product shows this quality in a high degree we call that elastic. When it shows this responsiveness to price in the low degree we refer to it as inelastic. The factor should be—this concept,—may I correct that,—this concept is usually used by economists to apply to the total demand for the product and not for the demand for the product of a particular producer. It is also, I think, to be distinguished from other terms with which it is sometimes confused, such as expansibility of the demand and variability of the demand. The demand for a product may expand over a long period of time, or it may vary from day to day or week to week or year to year due to factors quite different than price and thus that expansion of the demand, or variability of the demand, is not included under the concept of elasticity of demand.

43058 Q. What are some of the elements that create such an inelastic demand?

A. Well, an inelastic demand is— One of the most important elements is a condition in which the product is ordinarily used in conjunction with other products. I assume from common knowledge of the cement industry, not from any special investigation, that cement is used in conjunction with other things.

Q. Now, assuming that it is so used in conjunction with other products, would you expect the demand to be elastic or inelastic?

A. It depends upon the importance of the particular product relative to the other things with which it is used. If it comprises a relatively small part of the cost of producing a finished product, then the demand for the product would be correspondingly inelastic.

Q. Now, does such a condition of inelastic demand in an industry have any economic effect towards creating rigidity of price?

A. Well, there are—

Mr. Wooden: Will you pardon me, before you answer?

43059 A. Yes, I think it has. No one simple answer can be given as to just what that effect is. One of the reasons—Let us take a case of price reduction. One of the reasons that any seller might reduct his price is his desire to get a larger proportion of the existing business. Another reason is that even if he did not expect to get a larger proportion of the existing business he would so increase the total amount of business that he would benefit by that fact.

Now, if you find a situation in which sellers expect that other sellers will meet their prices promptly, then the first one is pretty well ruled out, and you have to fall back on the second, and if the second one is not present then that creates a further discouraging—constitutes a further discouraging factor to price reduction.

Trial Examiner Norwood: In other words, if he sells just so much cement the tendency is to get all he can for it and not to reduce the price if he can possibly help it; is that the idea?

The Witness: If the reduction in price is not likely to increase the sale of cement, then obviously one of the reasons for reducing the price is eliminated, and if then he, to carry it one step further, if he is faced with a

43060 desire for large volume he is likely, under normal business motives, to seek that larger volume in a more distant market.

By Mr. Bond:

Q. And would there be any relation between the extent of the inelasticity and the degree of rigidity?

A. Yes.

Q. Under such conditions?

A. Yes.

Trial Examiner Norwood: Wait a minute.

Read that, please, the decree of what?

(Question read.)

A. Yes; naturally the more marked the inelasticity the stronger this factor would be.

(Answer read.)

A. The greater the degree of inelasticity naturally the greater the effect which that inelasticity would have upon rigidity.

By Mr. Bond:

Q. Now, can you give us some examples of relatively inelastic demand in the sense of inelasticity of total demand?

A. Yes. A classic example is often used in the classroom—is the example of buttons that go into the manufacture of garments. The cost of the buttons represents a very small part of the total cost of the garments and
43061 therefore if the button manufacturers of the country would reduce the price of the buttons it is quite unlikely that it would have any effect upon the number of buttons sold because the number of buttons sold is a function of the number of suits of clothes sold.

Now, to take perhaps a more important example, is the case of automobile tires. Automobile tires are used in connection with automobiles and therefore the demand for automobile tires is the function of the manufacture and use of automobiles. Therefore, and also, the price of the automobile tires is a relatively small part of the total of the cost of the total automobile; therefore, a reduction of, say, 10 percent in the price of automobile tires would probably have a very negligible effect upon the possible price reduction in automobiles and therefore even assuming an inelasticity of demand for automobiles would have very little effect on increasing the sale of automobile tires.

43062 Q. Well, now, Professor, can you explain how in your judgment this same principle would apply in the case of cement?

A. If it is true that in the case of cement the cement is a relatively small part of the total cost of production; if, for example, in a $6,000 house, let us say, the cost of

the cement in that house might be, 6 per cent, then you have a total cost of cement of $360 and if you get a reduction in the price of cement of as much as 10 percent, you have only affected the total cost of your house by $36. Now, it is quite apparent that a reduction of that sort would have a negligible effect, it seems to me it would have a negligible effect upon the cost of building houses.

May I have that original question?

Trial Examiner Norwood: Read it.

43064 (Question read.)

A. That would indicate that cement would, under the conditions I have assumed, have an inelastic demand.

By Mr. Bond:

Q. And that it would tend to create price rigidity?

A. On the line of reasonining that I presented before, yes.

Trial Examiner Norwood: That is, those reductions in price would not increase the volume?

The Witness: That is right.

Trial Examiner Norwood: Go ahead.

A. (Continuing.) And if I may say further, in answer to Your Honor's observation, the other considerations that I mentioned, such as the practical assurance on the part of manufacturers that the price reduction would be met by others would have further deterring effects.

Trial Examiner Norwood: Go ahead.

By Mr. Bond:

Q. Now, is there any relation between inelasticity of total demand and the question of whether a seller will sell in different markets at the same time?

A. I think there is quite an obvious connection. Assuming the demand to be inelastic, then there is relatively little to be gained by a reduction in price. There is little to be gained by way of increased volume from the reduction of price. If you combine that with another factor that is present in many industries of high

43065 overhead costs, so that there is a difference, a marked difference, between average cost and out-of-pocket cost, it immediately suggests to a business man the possibility of separating his markets, so that since he cannot increase the volume of sales in a market in which he

is operating by lowering the price since he does have these two measures of cost, he solves the problem by attempting to separate markets.

Now, there are many ways in business of separating markets,—I won't need to go into them. One of the ways is by separating markets geographically, and that is feasible whenever transportation cost is an important factor.

Q. I am not sure that that phrase "separating markets" is entirely clear.

A. Of selling in separate markets. I might illustrate it by the—oh, there are a number of practices that markets can be separated in point of time, as for example the book manufacturer sells as many books as he can in his first edition, and then lowers the price of sales for others; at the theatre they charge one price to adults and another to children, and there are various other examples attempting to separate, of selling, and recognizing and selling in separate markets.

Q. Now, what is meant by the phrase "overhead costs"?

A. Overhead costs I conceive to be costs which do not vary directly with the unit of output. May I correct it,—the volume of output. The term is one of degree.

43066 There are some costs that vary almost precisely with the number of units of products. There are other costs that will vary as between a very large production and a very small production, but no very precise adjustment, and there are other costs that remain pretty well fixed almost regardless of volume to be contrasted with the direct costs or variable costs.

Q. Can you give us examples of some of the principal items that come within the term "overhead costs"?

A. Yes. Interest on borrowed money, depreciation, maintenance and salaries of the executive staff to a considerable extent, to some extent even the wages of the operating staff, and some economists would include interest upon the capital invested, interest upon it whether borrowed or not.

Q. How about depreciation?

A. I mentioned that.

Q. Did you?

A. Interest on capital invested might by accountants—they might object to calling that a cost. Whether it is

called a cost or not is a matter of no great importance, I think, from the economists' point of view, because if you do accept it as a cost then you put it in with the overhead costs, and if you do no, then you would put the return upon capital invested under the category of profits and you would regard that as minimum of the normal profit that you would expect to get, so that when you add up costs and profits you have it in anyway.

43067 Q. How about taxes?

A. Taxes, in so far as the taxes are levied upon the property, I would say would be classified as an overhead expense, in so far as based upon the gross income or volume of business would be more of a variable expense.

Q. Now, would there then be any relation between the size of the initial investment required to erect a plant and the degree of overhead costs?

A. Yes, there would be, the larger the investment the larger the overhead costs because a number of these factors I have mentioned are closely related to investment, also larger establishments ordinarily have a larger administrative staff which increases that item.

Q. What is the significance of overhead costs?

A. Overhead cost has this significance, that if under a condition of high overhead costs there is not a natural restraint on the part of individual business in men in determining their price policy it is likely to lead into ruinous competition. The reason for that I think is clear,

43068 that it is quite possible to get into a form of competition which bases price on out-of-pocket costs, which would be ruinous. Another effect of overhead cost, that is a significance of overhead costs, I think I have mentioned just before, and that is that since additional units can be produced with relatively little increase in out-of-pocket cost there is a tendency to sell these additional units in separate markets if possible at different prices than other units yield, therefore it leads manufacturers to be willing to accept different returns upon different parts of their output.

By Mr. Bond:

Q. Now, do economists use the term "marginal output"?

A. Yes, sometimes that term is used as referring to these additional units.

Q. And do they also use the term "marginal costs"?

A. Yes, these costs would be the costs of those additional units.

Q. And do economists recognize that it is proper to assign a different cost to this marginal output?

A. The economist, I suppose, has a number of functions, and one of his functions is to observe the operation of the economic world and try to explain the rational grounds of what happens; and when he is serving in that capacity he does recognize that business men are apparently assigning different costs; business men and accountants might be loathe to use that terminology, but that is the economists' explanation of what they are doing.

43069 Q. What would you as an economist say as to the justification for the sales of such marginal units at any amount in excess of out-of-pocket costs when they represent some increase in income?

A. I think they are often justified.

Trial Examiner Norwood: Now, read that question again, and the answer.

(Question and answer read.)

By Mr. Bond:

Q. And you understood by the word "income" that I meant net income, Professor, do you?

A. Yes.

Q. Now, is this question of the sale of marginal output related in any way to the problem of freight absorbing sales in an industry?

A. Yes, quite thoroughly so, because the freight-absorbing sale is a sale in which you are accepting a lower return upon part of your output than upon the remainder, usually on the justification of that; that is the best price that you can get, best return that you can get.

Q. And is this matter of inelasticity of total demand, does that have any relation to the matter of making freight absorbing sales?

A. Yes, because when the demand is inelastic that precludes, to the extent that it is inelastic, the possibility

43070 of increasing sales in the home market by lowering prices; therefore, the alternative of the freight-absorbing sale is more likely to be undertaken.

Q. Now, in the case of an industry that has high overhead cost, does this create any incentive to increase production to a point as near to full capacity as possible?

A. Yes, clearly so because it will—such large production will reduce the unit costs.

Q. And what would you say as an economist as to the justification for these distant sales at prices that yield a lower net return in order to achieve such increased volume so long as they exceed out-of-pocket costs?

A. It is a natural desire on the part of the business man to obtain such volume as will enable him to get low unit costs, and if this is a way of doing that it gains a justification from that fact, and not only from the point of view of the business man but from the point of view of the effective use of equipment an increase in volume of production that approximates the capacity is of course desirable.

Q. Do high overhead costs have any effect on price in an industry such as this?

A. Do you refer to the level of prices?

Q. No, I am thinking of prices in general of any one producer.

A. Well, high overhead costs has the effect of leading the producer to strive for volume and to get the increased sales in order to keep unit costs down. It has the
43071 effect also of leading him to charge different prices on the different parts of his output and this affect the relationship of output and prices. I refer to—may I add there, I was using the terminology of this industry, I referred to base prices.

Q. Well, were you referring to base prices when you said that he got different prices in different markets?

A. No, obviously not. Mill net—if I may change it a second time, it is mill net to which I am referring now.

Q. Now, Doctor, are you familiar with Dr. Fetter's book entitled "Masquerade of Monopoly;" which is again as an exhibit for the Commission in this case?

A. I am, yes.

Q. To what extent did Dr. Fetter in this book, "The Masquerade of Monopoly," refer to the effect of overhead costs?

Mr. Wooden: Now, Your Honor, I object to this question and to any questions regarding the book "Masquerade of Monopoly" unless they are limited to the issue for which that book was put in evidence, and that book was put in evidence only on the issue of Dr. Fetter's bias, bias toward the courts, and his temperament, and so forth.

Trial Examiner Norwood: I think Counsel is correct about that.

Mr. Bond: Well, perhaps this also goes to his bias when he is approaching this whole problem.

43072 Trial Examiner Norwood: Well, it should appear, yes.

Mr. Bond: Approaching it from a very limited standpoint.

Trial Examiner Norwood: If the Counsel assures us that it is on that issue—.

Mr. Bond: It is for the purpose—the question is for the purpose of showing that Dr. Fetter, in his concept of the problems of this industry, has failed to take into account certain important factors which make his conclusions and opinions seriously impaired in value.

Mr. Wooden: The book is not in for any purpose except on the issue of bias. Now, if he wants to bring out from this witness some respect in which he differs from Dr. Fetter's testimony as distinguished from the statements of Dr. Fetter in this book, that is another question.

Mr. Bond: Well, I think it relates to both. Dr. Fetter testified about overhead costs; he has testified about the problems of this industry. Now, I want to point out that both in his testimony and in the book he has failed to recognize a very important factor that affects all these problems.

Mr. Wooden: Stick to his testimony, not to the book.

Trial Examiner Norwood: I think you have to stick to his testimony. I think Counsel is right about that.

43073 The objection is sustained.

Mr. Bond: Well, I offer to show, if Your Honor please, through this witness, who says that he is familiar with the book, that at no point in this volume has Dr. Fetter given practically any attention to the problem—that the witness does not recall finding a single reference to overhead costs in the book, fixed costs, or any other terms that are customarily applied to this question.

43075 Q. Professor, are there certain wastes that an economist discerns in industry under the conditions of free competition?

A. Yes, there are a number of so-called wastes of competition.

By Mr. Bond:

Q. Will you outline the principal items of such wastes?

A. I am not sure I can give the principal items but I can give some illustrations.

A great deal of competitive advertising would
43076 probably have to fall in that category although it is extremely difficult to distinguish between that part of advertising and selling efforts that represent a really constructive service to the consumer and that part which could not be so defended. Then there is duplication of retail services; it has, in the opinion of some people, gone further than could be justified on the basis of ideal use of economic resources and duplication of delivering services between retail establishments, duplication even of research staffs among manufacturing establishments. A number of these that grow out of the nature of the competitive system, and must gain their justification from the assumed inherent advantages of the competitive system.

Q. Now, would you include cross-hauling as one of these wastes of competition?

A. Yes, I would include cross-hauling as an example of just this sort of thing. I would consider in answering my question that I am referring to genuine cross-hauling. There are a number of types of situations which are sometimes loosely,—and I think incorrectly,—referred to as cross-hauling that would not be included here.

For example, the hauling of a product from a greater distance to a consuming center rather than the shorter distance is not necessarily cross-hauling even though it did involve some freight absorption and would not be cross-hauling even though the long haul carried the
43077 goods past the door of a nearer mill, would not necessarily, but even after you narrow that down you would have cross-hauling, and I would put cross-hauling in that general category.

Q. Now, in your opinion is the waste incident to cross-hauling any more serious than these other economic wastes that are incident to competition?

43082 A. I have no figures on the cost of cross-hauling, and I have seen no figures which would be very convincing to me in measuring the precise amount of cross-hauling, but as to the nature of these economic
43083 wastes I would say that the wastes of cross-hauling would be no more serious than others that I have described.

By Mr. Bond:

Q. Now, are there any factors, Doctor, that tend to cause restraint of the amount of cross-hauling?

A. Yes, obviously when the mill sales—cross-hauling involves the freight absorption. Obviously, no mill would like to absorb freight; presumably does so when it has to do so in order to make a sale. The amount of such freight that it will absorb surely has some limit, and therefore the self-interest of the individual manufacturers would place a restraint upon them in the extent of this cross-hauling in which they would engage.

Q. Now, would you say that all cases of freight absorption are also cases of cross-hauling?

A. No, clearly not. Freight absorption would be involved at any time when one shipper is more distant from the market than another, and finds it necessary to pay some part of the freight or to make correspondingly a reduction in his mill price in order to meet competition where the nearby mill has an advantage because of its nearness.

Q. Well, if we take shipments, Professor, that are moving in opposite directions, into the respective territories of competing mills, do you consider that there should be any time relation between such shipments in order to
43084 constitute cross-hauling?

A. Oh, obviously, it would have to be at the same time or certainly approximately the same time.

Trial Examiner Norwood: Well, let us see, time for what?

The Witness: Of the shipment; that is, if one mill "A" ships over into "B's" territory in the month of July and mill "B" ships over into "A's" territory in the month of August then that could not be called true cross-hauling.

Trial Examiner Norwood: Would it make a different problem where in the first month he could have bought it in his own territory or in both months he could have bought it in his own territory? I cannot see where time would change the economies of the situation.

The Witness: Oh, yes, because the competitive situation may have changed decidedly during that month. For example, if mill "A" is shipping over into "B's" territory during the month of July, that might be explained by the fact that mill "A" had a very small demand in his own market and that there was a thriving demand over

in "B's" market. Now, in the next month the situation may have changed so that the situation was the other way. I would not say that that constituted true cross-hauling.

43085 By Mr. Bond:

Q. Now, would you say that if we had a figure that fairly represented the total amount of freight absorption, that that would represent the amount of cross-hauling?

A. No, that would presumably be substantially larger than the amount of cross-hauling.

Trial Examiner Norwood: You mean the total amount of freight absorbed?

Mr. Bond: Exactly.

The Witness: Yes, sir.

By Mr. Bond:

Q. Now, if customers in these two market areas each had a preference for a particular brand of cement which resulted in the mutual penetration of each other's natural market area, would you say that this was an example of cross-hauling?

43086 A. No, it would not be, if the customer really had this preference for a brand, a particular brand of cement, and that would be true whether outsiders might consider that that was a reasonable preference or not. In our economic system of free choice, it is the consumer's desire that counts, and not what someone else thinks his desires ought to be.

Q. Well, if in other cases you had a difference in color.

A. The same answer would apply.

Q. Which made a certain cement preferable to a particular customer, would the movement of the two cements into respective market areas of two mills constitute cross-hauling?

A. Oh, no, for the same reason. Cross-hauling involves the crossing of identical products, and that must mean identical from the point of view of the consumer because he is the final judge, naturally.

Q. Now, would you consider that all shipments from one mill that went by the door of another mill necessarily constitutes cross-hauling?

A. No, I would not think so. If "A" and "B" mills

are both selling into a market which we will call "X," and market "X" does not lie between "A" and "B," but, rather, if "B," in shipping to market "X" would naturally send his product past the doors of mill "A" then you simply have a case of the product being supplied by the more distant mill rather than by the nearer mill, and that is not cross-hauling.

Q. Is this problem of cross-hauling peculiar to
43087 this industry or does it exist in other industries?

Mr. Wooden: That is objected to, Your Honor, as irrelevant and immaterial and calling for factual information rather than expert opinion.

Trial Examiner Norwood: The objection is sustained.

Mr. Bond: If Your Honor please, my purpose was to show that it was a very general phenomena and not peculiar to an industry that is using basing points, for example. I think that we should have the right to show that.

Trial Examiner Norwood: The Commission will take judicial notice of that. I do not see why we should waste any time on it.

Mr. Bond: I did not quite get Your Honor.

Trial Examiner Norwood: I think the Commission will take judicial notice of that. We have laws against dumping and cross-hauling.

Mr. Bond: No law against it in this country.

Trial Examiner Norwood: No, I do not say that.

Mr. Wooden: We cannot try the conditions in other industries. They may be the result of basing-point systems just like in this industry.

Trial Examiner Norwood: Suppose you do show in this and every other industry, that would not help us any in this case.

Mr. Bond: In having the basing point, wouldn't
43088 it then be apparent that it was not a phenomenon that resulted from basing points?

Trial Examiner Norwood: I do not think so, necessarily.

Mr. Bond: It would have no probative value?

Trial Examiner Norwood: I think you are getting outside the field of relevancy.

Mr. Bond: Then I will simply offer—

Trial Examiner Norwood: Make your offer of proof.

Mr. Bond: I offer to prove through this witness, as an expert economist, that the problem of cross hauling is not peculiar to the cement industry but that it exists equally in many other industries throughout the United States.

I understand that is excluded?

Trial Examiner Nolwood: That is excluded, yes.

Q. Professor, would you say that it would be an easy task to determine accurately the amount of real cross-hauling in an industry such as this?

A. I think it would be very difficult; in fact, I do not know how it would be done.

43089 Q. Professor, is the existence of cross-hauling in an industry today any indication of competition between the various producers?

A. Yes, because cross-hauling implies that one seller is reaching over and selling in another seller's nearby market and that he is meeting the price in that nearby market in order to do so, which is clearly, in my opinion, a form of competition. You would not have cross-hauling under the concept of perfect competition, which I tried to describe yesterday, but under an assumption of imperfect competition cross-hauling is quite common and is a characteristic of that type of competition.

Q. Well, now, Professor, if you have such cross-hauling so that you have a mill selling at different mill nets, to what would you look to determine whether, to you as an economist, discrimination existed? Would you look at the delivered prices, or would you compare the mill nets on the two sales?

A. Well, I—using the term "discrimination" in the sense in which I think it is significant to an economist, without any contention of knowledge as to the court's interpretation of the term—I would look to the delivered price, because the competition—discrimination that is of significance to an economist, I think, is such treatment of buyers as gives an unnatural and unwarranted ad-
43090 vantage to one competitor over another competitor.

That means that the significance would be at the point of delivery, which determines the cost of the product to these various competitors.

Q. Now, turning to another subject: What does the term "market leadership" imply?

A. The term "market leadership" is used in various ways.

I conceive it to mean that the sellers in a market are following the practice of some seller who is taking the initiative as to—possibly as to price changes, as to selling policies, and as to various other things, and that that leadership, if we call it such, may vary in the extent to which it is accepted by others in the trade; that is, there may be a more or less uniform policy of following one, and the one which is to be followed may change from time to time, and the one which is to be followed may be large or may be small. But leadership in the sense that I have described seems to me is implied in the concept of imperfect competition, under which every seller must take into account what his competitors do. It is not necessary that every seller shall do exactly what the other one has done, but he must take his actions into account and adjust his own actions accordingly.

Q. And I think you said that the term may apply not only to taking initiative in prices but also as to marketing policies.

A. Yes. A notable example is in style leader-43091 ship. Some one company may be recognized as the style leader in garments. And it may be even as to labor policy. One company may initiate a policy which the other companies feel called upon to follow. And, in fact, almost anything that would have—any policy of manufacture—which would have any bearing upon the public's reaction to his products or to his policies.

Q. How do economists recognize that market leadership is a common or an uncommon phenomenon in American industry?

A. Oh, it is a very common phenomenon. In fact, it is implied in the concept of imperfect competition that sellers are keenly—are aware of the policies of other sellers and are adapting their policies to the policies of these other sellers.

Q. And if you find evidence of such leadership in an industry, in your opinion, as an economist, does this leadership indicate per se that there is any collusion or agreement?

A. No. I do not see how an economist could draw that

inference. There is bound to be a degree of this leadership, anyway, with collusion or without it.

Q. Is such market leadership consistent or inconsistent with the existence of competition?

A. It is quite consistent with the existence of competition.

Q. Would you have market leadership under conditions of perfect competition?

A. Not in the sense in which the word is popularly used.

But it is clear that even under conditions of perfect
43092 competition that one seller has to adapt his selling policies to what others are doing. When the price of a security changes on the stock exchange, presumably that change has been initiated by some individual and the other individuals follow. That is one of the assumptions of perfect competition, and in that sense you would have some leader somewhere even under the artificial assumptions of perfect competition.

Q. Now, assume that in the cement industry a large majority of the cement is sold to dealers, so that dealers as a class have been characterized as the backbone of the industry; and assume that some manufacturer offered to dealers some marketing practice that would seem to dealers more advantageous to them than the practice formerly followed by this manufacturer or by his competitors,—such as a more favorable discount, or a classification of business that gave the dealer a larger proportion of the manufacturer's business than other manufacturers were giving him.

Q. Can you state what would be the economic result to another manufacturer who did not change his practice so as to give at least equal advantage to his dealers?

A. I should think that, other things being equal, the manufacturer who did not make such a change would lose patronage thereby.

Q. Now, under the assumptions just stated in the previous question, would there, in your opinion, be any
43093 economic necessity that all such trade practices should be uniform?

A. Well, there is the economic necessity if several sellers are appealing for the patronage of given buyers that their offer shall be equally attractive. Now, that does not theoretically mean that they must be identical in every respect.

One of the gasoline stations that I am talking about, for example, might give better service in some respects, and the gasoline station over across the way might give better service in some other respects. But in the minds of the mass of buyers the bundle of services, gas and services offered by one competitor, relative to the price asked must be identical.

Now, when you come down to a case in which the product itself is practically identical and the price is identical and competition is keen, then there is a marked tendency for all of these items to be identical, as, for example, between the gasoline stations. If one offers the service of wiping the windshield, the other one will offer the same service. That is more likely, I believe, than to counter by offering some other equally attractive but different service.

So I am led to answer your question in this way: There is a tendency for these services to become identical between competing sellers.

Q. Now, assuming that marketing practices, such as discounts, classification of business between sales to
43094 dealers and sales direct to consumers, and so forth, are uniform as between competing manufacturers, will you state whether or not such uniformity raises, to you as an economist, an inference of collusion?

A. No, for the reason I have just mentioned. There would be strong competitive forces tending to bring them into line.

Q. And, in your opinion, Professor, is there any relation between the relative intensity of competition and the degree of uniformity of practices of this kind?

A. Other things being equal, the higher the degree of competition the higher the degree of uniformity I would expect to find.

43095 Q. Now, Professor, I am going to take up the subject of trucking and ask you a number of hypothetical questions which are based upon the same fundamental assumptions, but with certain changes or additions that I want you to consider carefully. These questions will deal with the discontinuance of trucking by one company and its discontinuance by competing companies, with the inauguration of contract trucking, and with the use of premium charge for truck delivery.

Now, the common assumptions in all these questions of trucking are as follows:

43100 Q. Assume that the most important customers of a particular cement manufacturer are its dealers, and these dealers in any one locality are in competition with one another in the retail distribution of cement; 43101 assume that cement is usually sold at delivered prices; that a cement manufacturer upon request sold cement for delivery to trucks at an f.o.b. mill price; that a few of its dealers took truck delivery of cement; that such dealers from time to time invaded the normal market area of other dealers of this company; and that these local dealers complained to the company and threatened to discontinue doing business with it; assume that a few of its dealers were able through trucking to deliver the cement at a lower delivered cost than competing dealers of the same locality, and that the latter complained to the manufacturer; assume that a great majority of this manufacturer's dealers were strongly opposed to truck delivery and urged it to discontinue sales for truck delivery; assume that another important class of its customers were railroads; that they were dissatisfied with the traffic that they were losing from truck deliveries and urged this cement company to discontinue sales to trucks; assume that the company's mill was equipped to load cement on cars, and that the cost of loading in trucks was usually greater than that of loading on cars; and, further, that loading on trucks had a tendency to cause labor dissatisfaction because of irregularity of shipping operations.

If under these conditions this manufacturer who had been making deliveries to trucks at an f.o.b. mill price changed his practice in any one of the following ways; to-wit:

43102 1. By refusing to make such deliveries to buyers' trucks;

2. By refusing to make deliveries to buyers' trucks, and in place thereof offered to make deliveries by trucks either owned by him or by the contract trucker at the same delivered price as charged for deliveries by rail;

3. Continued to make deliveries to buyers' trucks, but charged a differential for loading such trucks;

4. Continued to make deliveries to buyers' trucks, but charged a price equal to the delivered price as quoted for rail delivery.

Now, to you as an economist, is such action consistent, in your opinion, with individual action in the individual company's self-interest?

A. Yes, I think there is sufficient explanation—there is sufficient grounds here to explain such action on the part of a manufacturer who is acting in his individual self-interest.

Q. Now, Professor, taking the question that we had before us a moment ago:

Upon the same assumptions as stated in this last question on trucking, if the manufacturers that are competing with the manufacturer who has adopted one of said practices should in their turn adopt the same practice, would such action, to you as an economist, raise an inference of collusion?

43103 A. No, I think not, because of the tendency which we mentioned a few moments ago of bringing trade practices into line under conditions of competition with the desires of the buyers.

Q. Well, now, under these same assumptions as stated in the first question on trucking, if this manufacturer, having changed to one of the four alternatives stated, should thereafter change to another of said alternatives, or revert to his original practice, to you as an economist is such action consistent with individual action in the individual company's self-interest?

A. Yes, for the same reasons as given in my previous answer.

Q. And if any of these competing manufacturers should thereafter again change its practice to one of the other alternatives stated in the original question on trucking, and thereafter the other competing manufacturers should adopt the same practice, will you state whether, to you as an economist, such action would raise an inference of collusion?

A. No.

Q. Now, Professor, I am going to take up with you the subject of diversions of shipments in transit by buyers, and again I shall ask you a number of questions based on the same general set of assumptions, with certain additions to which I shall direct your attention. The common assumptions in all of these questions on diversions

43104 are as follows:

Assume that a cement manufacturer usually sells his cement at delivered prices; that the great majority

of his sales are to dealers; that a number of competitors are actively soliciting the purchases of each dealer in the territory in which this company does business; that dealer good will is a valuable asset to this manufacturer; and assume that this manufacturer sells in Town "A" at a delivered price of $2 a barrel, on which sale he nets, after deducting freight rate, $1.50 per barrel; and assume that this manufacturer sells in Town "B" at a delivered price of $2 a barrel, from which he nets $1.20 a barrel at his mill; and assume that in each case the dealer pays to the railroad the amount of the freight and remits the balance to the manufacturer; and assume that a dealer in Town "B" orders cement to be shipped to that town, and after the cement is delivered to the railroad the dealer diverts the shipment in transit to Town "A," paying the railroad the 50 cents freight due for shipment from the mill to Town "A" and remitting to the manufacturer $1.20 per barrel, which was the mill net due to the manufacturer on a shipment to Town "B," so that this Town "B" dealer now has this cement in Town "A" at a cost of $1.70 to him.

Now, assume that this Town "B" dealer now sells this $1.20 cement in competition with the manufacturer's customers in Town "A," whose cement is costing $2;
43105 and assume that the manufacturer's local dealers in Town "A" complained to the manufacturer, and in some instances threatened to discontinue doing business with him, and the manufacturer adopts a policy of preventing such diversion.

Under the circumstances stated in this set of assumptions, would you, as an economist, say that this action is or is not consistent with individual action in the individual company's self interest?

43106 A. If the manufacturer were faced with a practice of that kind, I can see that he would very naturally object to it. The dealer in Town "B" is trying to get a delivered price in Town "A," which was never intended to apply to Town "A," but which was based on a mill net—was based on a mill net which was intended to apply only to Town "B," and presumably to apply there for some special reason, and it seems to me that acting in his own self-interest he would take such steps as he could to prevent it.

By Mr. Bond:

Q. Now, taking the same assumptions as contained in the previous question and adding the following additional

assumptions, Professor, that manufacturers competing with the company referred to also sold cement to dealers located in Towns "A," "B," and elsewhere, on which they received different mill nets; that whenever a dealer buying from anyone of these manufacturers diverted cement to a destination at which that company had other dealers the local dealers complained to the manufacturer making such sales.

Now, if an individual manufacturer discontinued the practice of permitting diversions, would you, as an economist, say that this is or is not action consistent with individual action in individual self-interest?

43107 A. You refer to the first manufacturer who makes that decision, or are you—just how does this question differ from the other?

Q. In this question I am assuming that they are all selling the various points; that whenever diversions occur a dealer who buys from the manufacturer involved complains; and I ask if one of these manufacturers then discontinues the practice of permitting diversions would this, to you, seem consistent or not with individual action in the individual company's self-interest?

43108 A. Yes, I think that action would be consistent with the individual self-interest of the manufacturer.

Q. Now, taking the same assumptions as contained in the previous question, and adding one more assumption, Professor, that one individual manufacturer discontinued allowing dealers to divert cement,—now, if other manufacturers discontinued permitting diversions in transit, would you as an economist say that this would raise an inference of collusion?

A. No, I think it would not.

43109 Q. If some manufacturers took steps to prevent such diversion and others did not, what, in your opinion, would be the economic effect on business with dealers of the manufacturers who did not?

A. I think they would lose the regular—the dealer business as had existed before.

Q. Does the fact that for more than 20 years cement manufacturers have generally attempted to prevent

43110 such diversions indicate to you, as an economist, the existence of collusion, or is it equally consistent with competition?

A. I think it is consistent with the condition of competition, the practice being undesirable, if in a general way they attempted to prevent it.

Q. And would it indicate the presence of collusion?

A. No. An economist could not draw such an inference.

43111 Q. Professor, assume that on sealed competitive bids to governmental bodies experience has shown that the final award is made on the basis of total cost at point of use, including freight; that it has happened on a number of occasions that when on competitive bids one company bids a price lower than its competitors, the business is not awarded to such low bidder, but sometimes after such low bid is made public, all bids are thrown out and new bids are asked, when all bidders bid as low or lower than the original low bidder; and it has also happened that the governmental agency has permitted other bidders to reduce their prices without a new letting, either to meet the original low price or to make an even lower price; and assume that it has happened that when a company has bid on a competitive governmental letting a price less than its going commercial price at the destination in question, a competitor has usually reduced his commercial prices so that such reduced governmental price has often or usually been followed by a general reduction in commercial prices, can you as an economist state what price you would

43112 expect a manufacturer to bid on a sealed bid to a governmental body?

Mr. Wooden: That, also, Your Honor, is objectionable as going beyond the proper scope or field of economic expert testimony. It again goes into a subject of the psychology of the human mind; very speculative.

Mr. Bond: Well, not psychology, but what are the probable actions and probable results of such a set of facts.

Trial Examiner Norwood: I do not think that that is an economic question, or a question for an economic expert. It is a question of argument to the Commission and to the courts, and I do not think that the conditions here are just exactly proper.

Mr. Bond: I am sure we can give Your Honor the references to support every condition in that list of assumptions. They are not stated, you will note, as universal.

Trial Examiner Norwood: That is just a question that goes to the psychology, the human psychology of what you would expect under those circumstances.

Mr. Bond: What action, not what mental attitude, but what action would you expect a manufacturer to take under such circumstances. Now, the field of the economist clearly, I submit, is cause and effect in this business
43113 world.

Trial Examiner Norwood: You are asking him to assent to one of your arguments, and that would be just as strong if you quoted the record and argued it before the Commission.

The objection is sustained.

Mr. Bond: Then, if Your Honor please, I offer to show through this witness, as an expert economist, that under the circumstances stated it is his opinion he would expect the manufacturer would bid a price equal to the lowest commercial price at that destination.

Trial Examiner Norwood: If is rejected.

By Mr. Bond:

Q. Now, Professor, assuming facts as to the cement industry that were stated in the last question, and assuming further that on such sealed bids all companies bid the same delivered price, does such uniformity of price raise an inference of collusion or is it compatible with individual competitive action?

A. Now, if the mills under the circumstances I assume in this statement bid the commercial price then obvi-
43114 ously the action would be uniform because there is one commercial price, and if they did that that makes it uniform.

Q. And would that create an inference of collusion, or would it be compatible with individual competitive action?

A. I do not think in the mind of an economist it would raise an inference of collusion. It would be compatible with individual decision.

Q. Now, if the Government asks for bids f.o.b. mill, how would you expect the different bidders to determine their f.o.b. mill price?

A. I would expect them to determine, again under these same assumptions, I would expect them to determine the f.o.b. price by taking the commercial price and deducting from that the freight rate to the point of delivery.

43115 Q. Now, if the f.o.b. mill bids were thus made taking into account the destination cost available to the Government from other sellers, would you expect the destination costs of the different bidders to be different or identical?

A. I would expect the destination cost to be identical under those circumstances.

Q. And if on such f.o.b. mill bids the destination cost to the Government of the different bidders was the same, will you state whether or not such identity would, to you as an economist, raise an inference of collusion?

A. Not under the assumptions stated.

43118 Q. Under the conditions, then, Professor—Restating the question: Under the conditions that have been assumed as prevailing on competitive bids, and assuming that the dealer business is the backbone of the cement business, and that dealers learn of prices to governmental authorities and demand an equally low price, what, in your opinion, would be the economic consequences that would flow from such a situation in the case of any individual company?

43119 A. Well, the economic consequences would apparently be that the dealers would demand this lower price, and it would have the effect of depressing the price generally to the dealers, that being the result, which the manufacturer might not—

Trial Examiner Norwood: Now, you mean this, that if these dealers, these sellers, should bid a low price on a large quantity to the Government that that would have the effect of reducing the prices to dealers; is that right?

The Witness: It would have the effect of increasing the demand of dealers that that be done and creating ill-will among the dealers if it were not done, and since it is assumed the dealer business is the backbone of the cement company's business, I should think the demand of these dealers would have to be listened to with respect by the manufacturer, and that considerable pressure would be brought to bear upon him to make such price concession.

43120 Q. Then, what would be the final summation of those economic consequences?

A. The manufacturer anticipating such demands on the part of the dealers would naturally refrain from making a lower bid to the Government which would bring about this line of causation.

Q. Now, assuming that cement manufacturers have learned that buyers of cement, both public and private, ordinarily determine their prices between competitive sellers on the basis of cost to the buyer at destination and

that manufacturers with knowledge of that have generally refused to bid or quote f.o.b. mill and without reference to the cost to buyer at destination; how would you, as an economist, account for this attitude on the part of the seller?

43123 A. I would say that such refusal could well be explained by the unwillingness of a manufacturer to depart from a method which he believed was desired by most of his buyers. That is not uncommon phenomenon in business. Manufacturers or sellers frequently refuse to make special bases, provide a special base of sales for individual groups of buyers. Examples are given in the retail trade, for example. You go to a department store that commonly sells on a delivered basis and tell them "I do not want delivery and therefore I want 9 cents taken off the price of the product." I am not ordinarily likely to get it.

Q. Now, will you state whether or not under the assumptions just stated such refusal to bid or quote f.o.b. mill implies to you, as an economist, collusion or agreement?

43124 A. I do not see how any economist could draw the inference of collusion or agreement from that fact.

Q. Now, Professor, with reference to the charge in the complaint that the marketing practices in this industry have lessened competition in price, how would you as an economist determine whether, as a matter of fact, competition has been lessened?

A. There would be two possible approaches, it seems to me, to an economist to that question. One would be an historical one, and one would be a deductive one. Historically, it would involve a comparison of the degree of competition which exists under the present method with some degree of competition that existed under some earlier method. It seems to me normally that is what the word "lessening" would mean, reducing from something that had existed at some earlier time. Since I understand, however, in the assumptions that have been stated, indicate that this method of marketing has been in use for a long time,—as long a time as the general market conditions and conditions of the country have remained identical with the present or similar to the present,—that method would seem to be out, and then I would turn to the other,

as to a deductive approach and would compare the method of marketing in question with the only reasonable alternative to that, and that it seems to me is the uniform f.o.b. plan.

The present method of marketing clearly offers a
43125 different method of competition, a different pattern or type of competition, but it does not appear to me that it offers any less of competition, and in fact in some respects, particularly as regards the service offered to consumers and the continual solicitous watchfulness of offers being made to different buyers, in that respect it is superior, it seems to me, because it provides a larger number of sellers appealing to any particular group of buyers.

Balancing these considerations, then, I would say that in my opinion that does not lead to a lessening although obviously it does lead to a change in form of competition.

43126 Q. Now, Professor—

Trial Examiner Norwood: You may compare this to the condition under this system with what it would be under the present circumstances in the absence of the system, could you not?

The Witness: The absence of this system?

Trial Examiner Norwood: That would be your deductive method?

The Witness: The absence of this method implies the existence of some other method, and I am considering the only alternative.

Trial Examiner Norwood: How?

The Witness: I say, the absence of this method would imply the presence of some other method, and I am considering here the other method that seems to me could possibly exist.

Trial Examiner Norwood: Go ahead.

By Mr. Bond:

Q. Well, now, Professor, in making the comparison between the two methods, can you give us some of
43127 the tests which you would use?

A. To determine whether competition has been lessened?

Q. Whether this method lessened competition.

A. Well, one of the—I should ask the question, does the method in question, that is the present method, have the effect of reducing the number of sellers who are ap-

pealing for the patronage of a given group of buyers? Second, does it have the effect of discouraging improvement in the product, or in the quality of the service? Third, does it have the effect of decreasing the flexibility of price? Fourth, does it have the effect of raising prices above a level represented by cost plus a reasonable margin of profit, or, in fact, does it have the effect of raising the general price of the product at all?

Now, if I arrive, then, upon an examination of the industry, at negative answers to these questions, then I would conclude that I would accept that as evidence that there has not been a lessening of competition.

Q. Now, before considering any specific alternative and making such a comparison, will you tell us how prevalent is the practice of selling at delivered prices?

43128 A. I cannot give a statistical answer to that based upon my own researches. From my reading of the literature of marketing over a period of many years I have gained the impression and belief that the use of delivered prices is comparatively common among American industries, and that perhaps half or more than half of American industries do use it at some time or other and with some of their products.

Q. And is the so-called basing-point method of selling one method of arriving at delivered prices?

A. Yes.

Q. And what proportion of industries use the practice of freight absorption?

Mr. Wooden: Your Honor, I might have objected or might have moved to strike the preceding question and answer, but I will content myself with noting an objection to this before it is answered on the same ground I might have moved to strike the preceding one, that it is irrelevant and immaterial as to how common or how rare it is for delivered prices to be used and freight absorption to be used. It all depends upon the circumstances and conditions and the competitive relationships out of which delivered prices and the freight absorption grow, and we are getting nowhere and getting no light upon the situation in this case by talking about other industries

43129 where these end results crop up.

Trial Examiner Norwood: Read that question.

(Question read.)

Mr. Bond: It is simple, it is just a final question. I am

not pursuing the subject further, but I am sure that from a standpoint of public interest it becomes important, and I think it is a matter on which the Commission wish to be advised. It is almost common knowledge; it is not anything that really Mr. Wooden would seriously question, but if the thing is so very universal it is hardly something with which you can tie this industry.

Trial Examiner Norwood: Well, I do not see its relevancy anyway.

Mr. Bond: It is a single question, if Your Honor please. I am not going to follow it any further.

Trial Examiner Norwood: I think I will sustain the objection.

Mr. Bond: Then I will offer merely to prove through this witness, as a duly qualified expert economist, that a very large proportion of industries in this country use the practice of freight absorption; that without being able to give any specific figures, in his opinion probably a majority of industries at times make concessions from their standard f.o.b. price plus freight in order to meet the competition of other producers more favorably located
43130 freightwise relative to the prospective customer.

By Mr. Bond:

Q. Now, turning to the matter of alternative methods, and you said, I believe, Professor, that there was only one alternative that you thought was worthy of serious consideration, will you describe for us a little more fully just what you had in mind as constituting such a possible alternative?

A. I had in mind the uniform f.o.b. plan with no freight absorption.

43131 Q. And has this been advocated by any particular economist?

A. Yes, by Professor Fetter and others.

Q. And that is what he has set forth in his book?

A. That is my understanding of his recommendation.

Trial Examiner Norwood: That is the f.o.b. selling, was it?

The Witness: Yes, the uniform f.o.b.

By Mr. Bond:

Q. Mill?

A. Mill.

Q. Selling?

A. Selling. I should add the word "mill."

Q. Now, is there any other alternative or alternatives that might possibly be considered in making this comparison?

A. Well, yes. I have thought some of what the different methods could—what methods could be conceivably considered. The one would be the optional method in which the buyer at his option chooses between a mill price and a delivered price. Another might be a limited freight absorption plan, which would be substantially similar to the present plan except that the amount of freight absorption that could be undertaken would be limited. Another, just for logical completeness, might be—I might mention the zone plan in which prices were uniform over a considerable area or zone, and again just for logical completeness conceivably a postage stamp principle of pricing
43132 in which the price is the same all over the country.

Q. When you said "with a limit on freight absorption, by whom did you mean such a limit would be placed?

A. Oh, I suppose a limit set by the statutory regulations.

43133 Q. Professor, did you include in your list of conceivable alternatives the matter of using a central exchange?

A. No, I did not.

Q. Would that be a conceivable alternative?

A. It would be difficult for—

Q. I mean, did you mean you would include it?

A. Perhaps it should be included; perhaps in the same category as the postage stamp theory. It is difficult for me to conceive it as a practical matter.

Trial Examiner Norwood: Do you mean to include the plan of a common selling agency?

Mr. Bond: Like the Chicago Board of Trade or the Stock Exchange, or some such place.

Trial Examiner Norwood: A common selling agency like the Appallachian Coals?

Mr. Bond: No, sir; no. A central commodity exchange.

Trial Examiner Norwood: Yes.

43134 Mr. Porter: One of the Commission's experts suggested that might be a possible way.

By Mr. Bond:

43135 Q. Now, Professor, assume that each cement producer is required to sell within the territory im-

mediately surrounding his mill at a uniform f.o.b. mill price and is not allowed to make lower prices at any specific destination to meet competition, the extent of such territory being determined by the relation of such mill price to the mill prices of surrounding mills, and in addition each producer has the right to make occasional and sporadic sales on the basis of lower mill nets by the use of so-called freight absorption, but that such freight-absorbing sales cannot be systematic and constant. What effect would this have on his sales to dealers in the area within which he can only sell by such freight absorption?

A. I should think it would be difficult to make sales to dealers under those circumstances. The dealer business is a continuing and regular sort of thing, and it seems quite unlikely to me that a dealer would buy from the mill in question merely because at some time he may offer a price as low as the price that is regularly available to him from his regular source of supply. I think it is quite unlikely that you would be able to attract dealer business
43136 on that basis; and then the other side of this same question is the effect upon the manufacturer's sales organization, and that ties up with this same thing. A manufacturer must give his salesmen regular routes and they have regular customers upon whom they call. It would hardly be feasible, it seems to me, for the manufacturer to ask a salesman on some particular day when he wanted to make some freight-absorbing sales, to go around and call upon dealers with whom he had no previous contacts. For those practical reasons it seems to me it would be difficult to secure dealer business on that basis.

Q. Under the circumstances, would it appear to you that the making of freight-absorbing sales constantly and systematically is any more indicative of collusion than the making of such sales occasionally and sporadically?

A. I do not think so, because the occasion for making the freight-absorbing sale is presumably the desire on the part of the manufacturer to dispose of a large part of his output than he feels he can sell in his local market, and that is a continuing situation and not one that arises just occasionally or sporadically.

43137 Q. Professor, referring to the long hypothetical question which was read to you yesterday, the first of all these series of hypothetical questions, and which appears beginning on page 42967, and reminding you again,

as I said on that page, that whenever reference is
43138 made to this hereafter we will refer to it as the long hypothetical question, contrasting that description of the present method of marketing with the method of marketing described in the immediately preceding two questions, where basically the sales were at a uniform f.o.b. mill price but with the right to make occasional and sporadic freight-absorbing sales, and so forth, do you consider that this latter would create a more competitive situation than the method of marketing now in use?

A. No, I do not, for they both involve freight absorption. They are alike in that; in the case of the long hypothetical question the freight absorption is done constantly and regularly and in the other one it is done only sporadically.

Q. Now, assume that all of the mills followed this practice of making uniform f.o.b. mill sales but with occasional and sporadic freight-absorbing sales, would such a method of marketing eliminate cross-hauling?

A. Obviously not in so far as they were all doing it you would have the cross-hauling. If you had less freight absorption you would have less cross-hauling.

43140 Q. Now, taking first, Doctor, the method of marketing which you first proposed as an alternative for consideration and which was advocated by Dr. Fetter in his testimony in this case. Am I correct in understanding that you said there was no freight absorption under such a method of selling?

A. It is my understanding that under the so-called uniform f.o.b. mill plan there is no freight absorption.

Q. And if you added freight absorption to that would you have something very similar to what you have today, as described in the hypothetical question?

A. Very similar.

43142 Q. Well, then, Doctor, taking what you have described as a uniform f.o.b. mill method of selling, what would be the effect of such a method of marketing on the number of mills selling in each market area?

43143 A. It seems to me that the uniform f.o.b. mill method of selling would clearly have the effect of giving fewer mills competing in each market area.

Q. And in the case of an isolated mill having no nearby competitor, under that method of marketing would that mill have an area around the mill in which it would be the only seller?

A. Yes.

Q. Under those conditions, in the case of such an isolated mill, Professor, will the extent of the territory in which they can sell have any definite relation to the mill price that they fix?

A. Yes, apparently it would. The higher the price, mill price, fixed by a mill under that plan, the smaller would be the area in which it would be the seller, and perhaps the sole seller. The lower the price, the larger the area,—using the term "higher" and "lower" in both cases relative to prices being charged by the mills located at a distance.

Q. But whatever the extent of that territory which at any particular moment the mill controls, would it
43144 be the only seller at any point in that territory?

A. In the case of an isolated mill, that would be the case.

Q. Now, what about the point where its market area touches the market area of the next nearest mill?

A. At that point there would be the two mills competing. Because of the peculiarities in freight rates, that might be a zone, or a band, rather than a sharp line of demarcation.

Q. Has there been any term that has been used with reference to competition at that point?

A. Yes. I think Professor Fetter refers to that as marginal competition.

Q. Now, if the demand at this point were small, of what importance would the competition at this point be?

A. The competition at the point would be of relatively little importance, I think.

Q. And within the market area which under such conditions this isolated producer would control, would he have any competition, or would he be in the position of a monopolist?

A. Well, as long as there is any other mill within any reasonable distance, so that it is possible to send cement into the territory the isolated mill could not properly, I think, be called a monopolist. That is, the other mill would constitute—would be a competitor under any form that one can imagine. On certain points, however, the mill so situated could act very much as a monopolist.

43145 For example, on the quality of service that it gave to the customers in that territory it could be quite arbitrary. I do not think it would have to worry a

great deal about promptness of service or the adjustment of claims, or the other hundred and one things that go into making up satisfactory trade relations, because they would be presumably the only seller.

Trial Examiner Norwood: Well, in case he charged less than the price plus freight of his nearest competitor.

The Witness: Yes, sir. That is my point.

Trial Examiner Norwood: But if he charged just the same, he then would have to give equal service as the other man, would he not?

The Witness: But under the uniform mill net plan, if he charged the same prices—if he charged prices that yielded the same mill net to all buyers, which I assume is implied in the term "uniform mill net," then he would have some one area in which he would be the—which he would be offering the lowest price, and no other mill could possibly be in that area. In other words, you would not have the overlapping that you now have. Therefore, as to the customers within that area I think the isolated mill could be quite arbitrary as to a number of its actions.

Trial Examiner Norwood: I see.

43146 By Mr. Bond:

Q. And as to his control over price in that area, would there be any resemblance to the monopolist control over price?

A. There would be a resemblance in this respect, that he would have a certain—that within certain limits he could fix price at will.

Now, that is not an unlimited range, but he would have within that range the same sort of power that a monopolist has.

Q. Now, taking next the case of two mills situated closely together, what would be the effect on competition under this uniform f.o.b. mill plan in that case?

A. If the two mills were located closely together, and could not sell outside the area on a freight-absorbing basis, as is implied in the assumed plan, the competition between those two mills would presumably become extremely keen in order to gain volume from a certain limited area.

Considering that these mills are characterized by high overhead costs, and that the demand for cement is elastic—assuming these to be true—the result I would expect to be ruinous competition.

Probably the secondary result of that would be agreement between the mills or final merger of the two mills, in which case we would be back to the same situation that we had with the isolated mill.

43147 Q. Now, would you expect that the price of cement under this uniform f.o.b. mill plan would have any relation to the location of the demand and the nearness of the demand to the producing point?

A. In the case of a mill which was located in the midst of or very close to a rich market, I would think that the mill could then raise its price under this alternative plan more than they could under the present plan.

If, on the other hand, the markets are at a considerable distance, and the mill finds it necessary to reach out over this considerable distance to sell its goods, that would obviously have a depressing effect upon price, because the f.o.b. mill price would have to be low enough to enable them to get into that distant market.

So, whether the general effect would be of raising prices or lowering prices,—as to that one could not generalize. And, of course, you must remember that there are infinite variations between these two extremes, and therefore the effect upon the level of prices would be quite unpredictable without knowing the circumstances of particular

43148 case.

Q. Have you seen in testimony in this case Dr. Fetter's description of conditions that create in his opinion a true market?

A. I have.

Q. What kind of competition would you say that Dr. Fetter was describing in describing such a market?

43149 Trial Examiner Norwood: Just refer to it in the record.

Mr. Bond: It begins on page 17906 and continues and is sumarized on page 17913.

43151 A. I think Dr. Fetter is referring to what is generally called perfect competition, and different economists will include slightly different features in perfect competition, and not all of those that I have previously mentioned as characterizing perfect competition are present here, but broadly speaking—

By Mr. Bond:

Q. And you have already testified as to whether perfect competition does exist in any manufacturing industry, or whether it could exist in this industry?

A. Yes.

Q. Now, continuing with this matter of uniform f.o.b. mill sales, if all cement were required to be sold on that basis of marketing, would it be possible, in your opinion, to avoid such requirements?

43152 A. I can see several ways by which manufacturers might meet the situation.

One might be by the establishment of silos at various places close to markets and basing their f.o.b. prices upon those silos rather than upon the present mills.

I suppose it would be possible for mills to establish grinding plants at various points so as to accomplish the same result.

Now, quite aside from any planned effect, I think it is quite likely that to make such a requirement would have the effect of encouraging a number of small—the building of a number of small mills located near two markets; and also quite aside from anything that the cement companies might do, I would think that there would be a tendency for the railroads which were deprived of freight, of traffic, that they are now securing on this freight-absorbing basis, to make adjustments of their freight rates so

43153 as to make it possible to continue the shipment of freight from mills to the markets just as is now being done.

By Mr. Bond:

Q. Well, if these steps were taken what would be the effect on price?

A. One can only deduce the effect upon price through the effect upon cost, and these actions that I have anticipated would—at least those taken by the cement mills, and leaving aside the adjustment that might be made by the railroads, the railroad rates would presumably have the effect of multiplying productive capacities, and it would seem to me, therefore, that your average costs of cement production will have been increased. If that is reflected in price, one might reasonably expect it to be. It might have the effect of an advance in price.

Q. Now, Professor, taking the present method of marketing as described in what we are calling the

43154 long hypothetical question, assume that you have two mills, "A" and "B," which at the present time are selling not only in their respective market territories within which they respectively make the delivered prices,

but are also by freight absorption selling in territory of the other mill, would there be any economic advantage to mill "A" to suddenly cease these freight absorbing sales into mill "B's" territory?

A. The direct result of so doing would clearly be that they would lose the freight-absorbing sales; so, as to the first effect, by definition, I could conclude that there would be a reduction in the volume of "A's" sales.

If at the same time that it changed its method of marketing and ceased these freight-absorbing sales it also lowered its mill price, then it might exclude some of the competitors at a distance who are now selling in that market and discourage some of the others who are now selling in that market.

But since by definition you are going to lose all of the freight-absorbing sales, and only possibly gain something by—of sales in its own territory, I should think that the anticipated result would be a decline in sales, and it would not be an advantageous move from the point of view of the mill in question.

Q. Well, now, assuming that mill "A" has taken this step of ceasing to make these freight-absorbing
43155 sales in mill "B's" territory, would there be any economic advantage to mill "B" to follow this same procedure with respect to its sales in mill "A's" territory?

A. The same argument would apply to mill "B." If it did cease the sales in the territory of the other mill, it would lose those freight-absorbing sales. There is no reason why mill "B" should not be thankful that mill "A" had ceased its freight-absorbing sales in its market, but continued nevertheless its own freight-absorbing sales in "A's" market.

Q. Well, if under the conditions that we are considering mill "A" has adopted such policy, and mill "B" has not followed this by similarly adopting the same policy, would you expect mill "A" to continue to follow this policy or to return to its former practice?

A. No. If mill "B" did not take the hint, so to speak, and reciprocate by withdrawing from "A's" market, then it seems to me "A" would have to revert to his original practice.

Q. Then, under these conditions as we have stated them, would you as an economist expect either mill "A" or mill "B" to take such a step, and would you expect the other mill to follow, if they did?

A. I would not, if they are acting individually.

Q. Then, in the absence of statutory or other legal requirement, would the introduction of this plan of uniform f.o.b. mill selling in place of what the industry now
43156 has, as described in the long hypothetical question, indicate to you the presence of competition or of collusion?

A. In the absence of a statutory requirement to do so, if the two mills adopted a plan of that kind, and each one remaining in his own market and refraining from the freight-absorbing sales, I would infer collusion between the two mills.

Q. And in the absence of such requirement by a statute or other legal requirement, would the adoption of such method have any resemblance to the division of markets in industry?

A. Yes, it would have a resemblance to division of markets.

However, as the term "division of market" is usually used in economics, it refers to a situation in which two or more sellers agree to remain out of one another's territories regardless of the prices that the two sellers might charge within those territories. That is, it is purely arbitrary.

Now, in this case you would have the two separate markets and something like a division of markets, but the size of that market area would depend upon the price adopted by the mills in the two market areas respectively. But the resemblance is that within that area, leaving aside the way in which it is determined, each mill is the sole seller.

Q. Now, we have been considering for the moment, Doctor, the possibility or lack of possibility of the adoption of such method of marketing under the present conditions.

43157 Let me ask you this: Returning again to this matter of selling at a uniform f.o.b. mill price, assume that all mills are selling on such a uniform f.o.b. mill basis, and that there is a big demand in a particular mill's market territory due to a large Government project; and assume that that mill, after reserving a sufficient proportion of its capacity to take care fully of its commercial customers, is able to supply only a portion of the cement for the Government project; and assume that the balance of the

cement required for the project has to be secured from a more distant mill.

What would be the effect on the total cost of the project to the Government?

43158 A. Well, if you have one mill located near to the proposed Government project, and that mill is not able, after taking care of its commercial business, 43159 to supply all of the Government needs, I would expect then that that mill would bid its regular commercial price to the Government, as I think I have testified before.

Now, a more distant mill, knowing those facts, knowing that the nearby mill cannot supply all of the needs of the Government,—I think under those circumstances they would naturally quote their regular f.o.b. mill price plus the freight to that point, and that would presumably mean that you would have part of the supply which the Government desired at the one price, which was a commercial price of the nearby mill, and the remainder of it at a higher price, which represents the f.o.b. price of the distant mill plus freight; so they would be paying two different prices for different parts of their cement, and on the average a higher price, because the second part would be higher than the total is now.

By Mr. Bond:

Q. So the total cost would be greater?

A. The total cost would be increased.

Trial Examiner Norwood: Read that answer, please.

(Answer read.)

Trial Examiner Norwood: How would the distant mill know that the near mill would charge the full commercial price for part of its output?

43160 The Witness: Even if he charged less than the commercial output,—if that is the implication of your point,—the case would be the more striking, because there is no reason why the distant mill should quote a price as low as the nearby mill when it knows that the nearby mill cannot supply all of the needs of the Government, anyway.

Trial Examiner Norwood: And you say that that would finally result in a higher price to the Government?

The Witness: Yes.

By Mr. Bond:

Q. Doctor, will you state whether, in your opinion, the

adoption of a uniform f.o.b. mill basis of selling would have any tendency to reduce sales at secret prices below the openly quoted price?

43161 A. Presumably it would have the effect of discouraging secret price cuts, because the existence of the secret price cut would be quite apparent,—that is, if each mill has a natural market around itself which would, if everyone abided by the uniform f.o.b. basis, belong to it alone, then the very fact of another mill selling in that territory would be almost conclusive evidence of a secret price cut.

Q. Now, in your opinion would such a method of selling on a uniform f.o.b. mill basis have any tendency to affect the total mill capacity in the different areas?

A. It would have the effect of encouraging a shifting of productive capacities. Because of the relation that I mentioned before, of markets to the different mills as being affected by these two plants, there would be a tendency to increase the capacity of the mills near to consuming centers and to decrease the capacity of mills that were located far from the consuming centers. But in a shift of capital resources of that sort the time element is

43162 very important, because it takes a very short time to increase the mill capacities of those mills where that seemed to be appropriate, and it takes a very long time to decrease the mill capacities of the others, because that has to wait for mills to wear out. You can build mills much more rapidly than mills wear out. So in the interim you are likely to have in a shift of that kind an increase in the total capacity of the industry.

Q. And what, if any, effect would this have on average cost of production?

A. Obviously, no individual can predict the precise effects in every particular case, but I think we can say that in general if you had an increased capacity in an industry, which I understand there is already overcapacity, or even if that assumption is not true, in an indus-

43163 try in which the requirements of the market can be met by present facilities, you would tend to have an increased unit cost of production.

There is a second consideration, too, and that is that under the line of causation that I have described there would be a tendency for mills to be located near to the markets.

Now, it would be sheer coincidence if the best location of a mill from the point of view of the market were also the best location from the point of view of raw materials, labor supply, and other factors of production.

So I would expect on that ground also to find an increased cost of production of cement arising out of a shift of that kind.

By Mr. Bond:

Q. Now, under such a uniform f.o.b. mill method of selling would a so-called chain mill company, namely, a company that operates a series of mills all owned by it and located at different points through the country,—would such a chain mill company be at an advantage or disadvantage over the smaller independent company which was operating a single mill at a point where this method of selling affected it adversely?

A. Well, it would have an advantage over a small independent mill if it was adversely located, because I think it is safe to assume that the chain mill would have some of its mills favorably located even though some of the others might be unfavorably located. So you have some 43164 thing like a condition of diversified investments, that the advantages of some would offset the disadvantages of others.

Q. Now, we have had in the case, Professor, some testimony about prices in this industry having a certain pattern. Will you tell us whether or not under such a method of marketing on a uniform f.o.b. mill basis the delivered costs at various destinations would conform to a pattern similar to that which now exists, in territory about each mill to the extent that railroad transportation is used?

A. I would think that the pattern of prices would be the same under the two plans. Under the present plan there is one mill fixing its base price and adding freight to that price. That determines the pattern of prices that are charged. That would be true also under the other plan. The only difference is that under the present plan sellers do occasionally reach out over that divide of land, so to speak, that divides one mill's market from another and sells in the other mill's market. Under the other plan they would stop at that dividing line, but the pattern of prices would be the same in one case as in the other, meaning by that the geographic relationship of prices.

Q. And I assume that you are using "prices" in the

case of a uniform f.o.b. mill basis as meaning the delivered costs?

A. I am referring to delivered prices.

Q. And if under such a method of marketing sealed bids were invited by a governmental authority, and
43165 if it were customary to make the award to the company whose bid enabled the Government to secure the cement at the point of use at the lowest combination of f.o.b. mill price plus freight to destination, would you expect the bidders to take this fact into consideration in determining their bids?

A. Yes, certainly I would expect them.

Q. And under such conditions would you expect the sealed bids to be different or uniform with respect to such delivered costs?

A. I should expect them to be uniform, or if the advantageously located mill under those circumstances found that its f.o.b. price plus freight would be higher than the price that would be bid by the nearer mill, it would not bid at all, so prices would be uniform.

43166 Washington, D. C.,
Friday, September 6, 1940.

DR. CLARE E. GRIFFIN, thereupon resumed
43168 the stand and testified further as follows:

Direct Examination (Continued.)

By Mr. Bond:

Q. Now, Professor, yesterday when you were enumerating what you considered the possible or conceivable alternative methods of marketing you spoke of one where the buyer would have the option of either buying on a delivered price or of taking it at an f.o.b. mill price if he desired.

A. Yes, sir.

Q. Will you describe a little more definitely just what you had in mind.

43169 A. Well, I meant by that merely that the mill could quote an f.o.b. mill price and quote a delivered price but that the buyer would have the option of taking his choice as between those two.

Q. Now, would you as an economist expect a buyer would examine and weigh this option?

A. Yes. I would expect that he would. He would take into account the terms of sale, the amount of the discount, the promptness of delivery, and one method and another and the other factors that appear to be relevant
43170 to him.

Q. And would you as an economist expect a purchaser would exercise his option to buy f.o.b. mill if it resulted in a higher delivered cost to him?

A. No, I think he would not.

Q. Now, assume that to some destinations the trucking costs from the mill are higher than the railroad freight rate, what effect would this have on the optional method as far as such destinations are concerned?

43171 A. Under those circumstances I should think that the f.o.b. mill price plus the trucking would give a higher delivered cost than the regularly quoted delivered price would be.

43172 Q. Now, Professor, what, in your opinion, would be the economic effect of such an optional method of marketing?

A. Well, I think that some buyers would object to it, or that—better still, I should say that the buyers would come to prefer one method or the other method, and that the—that is, the dealers—and that the manufacturer would be forced to come to one of these methods of selling and then he would revert back to one of the two methods.

Q. And would that have any relation to the preference of a majority of the buyers, in your opinion?

A. I think it would if as we have been informed the dealer business is the backbone of the cement business, and manufacturers do value the good will of dealers highly, then the desires of the majority would presumably have considerable influence upon the manufacturer's
43173 decision.

Q. And when you said "as we have been informed," were you referring to the assumption of the fact in various questions yesterday?

A. Yes.

Q. Now, you spoke of another possible alternative method of marketing, the placing of a limitation on the amount of so-called freight absorption. Will you explain to us a little more what you had in mind as to that?

A. Well, it is conceivable that one might have the present plan, I mean the—yes, the present plan, but that
43174 some limitation be placed upon the amount of freight that could be absorbed by sellers under this plan. It would simply be—it would not be different in kind but simply different in degree from the present.

Q. You say "some limitation"; by whom?

A. The limitation would presumably have to be made by statutory requirement, administrative order, possibly it might be done by a general agreement through an industry if that were feasible.

Q. Now, will you say that under such a method of marketing that the amount of freight absorption limited by statute, you would have any more competition in the industry than you have under the present method of marketing as described in our long hypothetical question?

A. No, I don't think it would increase the amount of competition. The only conceivable advantage is that it would tend to reduce costs of cross-hauling, but as to the degree of competition I see no reason for thinking that that would be increased.

43175 By Mr. Bond:

Q. Would it constitute a restraint on competition?

A. Oh, decidedly it would constitute a restraint upon competition.

Q. And would it be feasible to impose such restriction by a single arbitrary rule for the entire country, or would it in your opinion be necessary to give some administrative body the discretion to determine the amount of freight absorption in different sections of the country?

A. I think because of location of mills and markets it would obviously be necessary to provide for a variation presumably through administrative discretion.

Q. Now, you also spoke of another conceivable alternative, Professor, the selling on the basis of zones. Will you explain what you meant by this?

A. I really think it is not a practical alternative in this case, but you might have a situation of large areas in which uniform prices prevailed throughout the large area.

Q. Would you say that such a method of selling would mean increased competition as contrasted with the method of selling which was described in the long hypothetical question?

A. No, I think not.

Q. Now, the testimony has shown that in certain large metropolitan areas zones have been used to give the same delivered price to all dealers in such a metropolis. Was this what you had in mind by zoning?

43176 A. No, no. I had in mind large zones, covering a substantial part of the country, I mean.

Q. Taking a method of marketing as described in the long hypothetical question, would there seem to be any factors that influenced or compelled the use of such metropolitan zones under the present method of marketing?

A. Well, I can see natural reasons for it; yes, sir; within a metropolitan area there will be several dealers who are actually selling to the same customers, and, therefore, that it would be desirable to prevent the variations in costs to these different dealers who are actually operating in the same consumer market.

Q. Now, you also mentioned another alternative, Professor, the so-called postage stamp method. Just what did you mean by that?

A. I merely included it for the sake of logical completeness. It would be the method of marketing which is used for some light product in which transportation cost is insignificant and in which the price would be the same, the delivered price would be the same over the whole country, or a very large area.

Q. Would that be logically applicable to an industry such as this, where the commodity is a heavy one?

A. No.

Q. Would there be more or less freight absorption under such method of marketing?

43177 A. There is obviously much more freight absorption on the postage stamp principle.

Trial Examiner Norwood: There would not be more freight absorption, though, would there,—I mean the volume, the gross amount of freight in dollars and cents would not be as much?

The Witness: Yes, I think it would be greater. It is entirely a theoretical fanciful idea, but I think the freight would be greater.

By Mr. Bond:

Q. Now, Professor, in the testimony of a witness for the Commission there was testimony substantially to this effect: That he as an economist saw no reason why cement

should not be sold on an exchange, a single exchange. If we assume that due to the proportion of cost represented by freight cement moves, say 200 miles from the point of production, would you say that in view of this fact it would be feasible to sell it through a single exchange or would a number of different exchanges be required?

A. Oh, I think obviously there would have to be several exchanges.

Q. And would it mean a few or many?

A. There would probably have to be many of them in view of the nature of this product.

43178 Q. Now, do you consider that it would be feasible to sell cement in this way through a series of central exchanges?

A. I do not think it is.

Q. And what are your reasons for that conclusion?

A. I do not think so. There are certain recognized conditions that have to be present in order to es-

43179 tablish a produce exchange of the sort like the wheat exchange, for example. One of those conditions is a large number of sellers and a large number of buyers,—such a large number of sellers and buyers,—particularly, I refer here to sellers operating on the market, so that no one of them can have any material effect upon that market. That, it seems to me, is not true in this case. It would not be true even if you had, could, conceive one exchange for the whole country, and when we narrow it down, as I have indicated I think we would have to do, to have regional exchanges, then you would obviously have a very limited number of sellers operating in each of these markets.

Another characteristic is regarded as necessary for the existence of a market of this kind, an organized exchange, is that you be dealing in a homogeneous product. Now, from one point of view cement is a homogeneous product. Physically it approaches that very closely, but unless we assume that the cement is actually going to be hauled to this regional market, and I cannot imagine that being done because of the cost of bringing the physical product right there and putting it in the market place, if we assume that that is not true then actually you are dealing with cement as of the different places, that is the different mills, and because of the high cost of transportation that means you are really dealing in different products. The cement of

mill A is different from the cement of mill B be-
43180 cause it is in a different place. So it would lack two of the necessary requirements, I think, of an organized exchange; one, a number of sellers, and, second, homogeneous products.

Trial Examiner Norwood: Doesn't that apply to wheat, also?

The Witness: No. The wheat actually is brought to the market, and on the Chicago Board of Trade, for example, the trading in wheat takes place as of the trading area of Chicago, and those lines out through the railroad yards. It is very definitely said that the wheat is to be exchanged right in that place. Now, we cannot imagine cement being hauled from different mills to that one place.

Trial Examiner Norwood: Isn't that the case where there is just a small amount of wheat sold on the exchange?

The Witness: It is true of the wheat sold on the exchange, as far as the spot market is concerned, that is the actual wheat, not referring to future market.

By Mr. Bond:

Q. Now, if this cement were sold on central exchanges, would this have any tendency to make these exchanges basing points?

A. I think it would have the effect of, if we could waive aside these objections that I have raised and imagine that you do have the exchanges operating, then I should say
43181 that the market price determined at that exchange would become a base price.

Q. Now, what, in your opinion, would be the effect of selling cement on a central exchange on the cost to the ultimate consumer?

A. Well, if the cement is actually going to be brought to the central exchange quite obviously the cost to the consumer is increased. If the cement is not to be brought there in the way I have indicated, then I do not think you could have a market operating under those circumstances because of the lack of homogeneity of the product, and so I can see no reason that the cost to the consumer would be reduced.

Q. Now, Professor, have you given us all of the alternatives that you have been able to bring forward for comparison with what we have pictured in our hypothetical question as the present method?

A. I have.

Q. And of them all which do you think are worthy of serious consideration and comparison?

A. Only one.

43182 A. Only one, that would be the plan which has been referred to here as the Fetter plan, or might be called the uniform f.o.b. mill plan.

43184 Q. What, in your opinion, would be the economic effects on the public interest if this uniform f.o.b. mill plan were adopted in the place of the present system of marketing?

43188 A. My reasoning as an economist is that the adoption of that proposed plan would not be. My conclusion as an economist is that the adoption of that proposed plan would not be in the public interest. My reasoning involves a balancing and an evaluation of the advantages of the two plans. An advantage claimed for the so-called Fetter plan, that is the uniform f.o.b. mill plan, is the elimination of cross-haul. Now, in considering that argument I have considered it necessary to

43189 eliminate some cases which are sometimes loosely and improperly associated with true cross-haul. For example, hauling a product from more distant points to a given market rather than from nearby points is not necessarily true cross-hauling.

43192 A. (Continuing) And that would be true even if you were hauling if the product actually passed by the mill of another producer under some circumstances, but after we have narrowed down that concept of cross-hauling to what seems to me to be true hauling, an economist must recognize that that is from some point of view a competitive waste. It departs from the—it involves a duplication of transportation costs which is not ideal. I consider that this is, however, one of the outcroppings, outgrowths, of competition, and that it is thus in a class with a number of other competitive wastes with which we are familiar in our economic system, and which have to be justified on the ground of the advantages of the competitive system as a whole.

43193 A. (Continuing.) We were speaking of the so-called wastes of compensation which are rather common in our economy. An illustration is the phenomenon of milk companies, retail milk companies located on

opposite sides of a town. For example, there are some three milk companies whose wagons pass my door.

A. (Continuing.) I was offering an illustration
43194 of this, these wastes of competition, so-called, the duplication of services by, let us say, retail milk companies, and that when several milk companies do have their wagons passing my door it would naturally occur to anyone that that cost of delivering milk would be substantially reduced if we had only one milk route rather than three, and from one point of view that is clearly true. Still, if I saw in my town that these three milk companies were each remaining within their own natural market, so to speak, and not overlapping into the others' natural territories, I would suspect collision. That is the only basis on which I could explain that action, and, furthermore, if that situation were changed so that there were just the one milk company serving each neighborhood I would have no confidence that the consumer would derive the benefit from whatever reduction in cost might be realized by that change. Furthermore, the costs, themselves, would be affected by this fact, I believe, that each of these companies would know that it was the only seller in the particular area. They, therefore, lose some of that alertness which naturally exists. Now, when several sellers are competing for the patronage of a given group of buyers, and, therefore, taking costs as a total I am by no means sure that they would be reduced. Now, similarly, in the cement industry I believe that the advantages of continuous competition at all consuming points more than
offset this cost of cross-hauling which any econo-
43195 mist must frankly recognize. Now, in saying this I do not mean that there would not be competition under the alternative plan, but the forms of competition are different, and in my reasoning on this question I therefore considered these two forms from the point of view of the effectiveness of the forms. First, I have turned to the effects of competition upon price. Now, I think that the effectiveness of competition can be judged by the limitations which it places upon any seller to dictate conditions of sale at will.

Trial Examiner Norwood: Read that last sentence.

(Record read.)

Trial Examiner Norwood: Go ahead.

A. (Continuing.) Now, under the present plan, as it

has been described here, it is clear that no manufacturer can do that as to equality of product nor as to the quality of service, promptness of delivery, and so on. It is clear that he cannot do that because there are several sellers competing for the services of the same group of buyers, and also as to price he cannot do it. As to price there are two questions here. Certainly as to his freight-absorbing sales he cannot do it because by definition a freight-absorbing sale is one that is meeting the price of some other manufacturer, so obviously he cannot dictate price at will in that case.

Now, as to the territory in which he can determine the base price, he cannot there do it because of the fact
43196 that there are other possible competitors, there are other mills at a distance, and that if the price is raised in his nearby market then that market is made more attractive to those more distant mills. That has two aspects; one, that it is likely to increase the number of mills who sell in that market, and, second, it is likely to increase the degree of vigor with which the mills that are now selling in that market will attempt to push their sales. So, under the proposed plan, as I say I do not deny that there would be price competition under the proposed plan, that under the proposed plan the limitation upon the power of this seller to fix prices at will would be in the fact that as he did raise his prices he would restrict the area in which he would be the sole seller.

Now, in short, then, you have two plans and two forms of competitive pressure. In the present method the pressure is the desire to keep at the minimum the invasion of one territory and to retain as large a proportion of the profitable nearby business as possible, and under the other plan the restraint upon the individual is in the effect which his price policy would have upon the size of the market. Now, I see no reason for thinking that the proposed plan is superior to this one in that respect. As to the effect upon promptness of service, upon reasonableness in making adjustments of claims and upon many other points that make for satisfactory treatment of buyers,
I think that the present plan is definitely superior.
43197 Furthermore, I believe that the necessity of meeting competition continuously at every consuming point, large or small, through the country, must have a very salutary effect and the economists would expect it to

have a very salutary effect upon the attitude of producers. It would be expected to breed an attitude of alertness; of keeping continuously on one's toes which contributes in many ways and they are not always predictable in detail, would contribute in many ways to the improvement in the general efficiency and enterprise of an industry.

Now, I have considered that under any economic system it is just as important—it is particularly important in the type of economic system of free enterprise.

Now, finally, I have considered that presumption,—balancing these considerations I have considered that a presumption exists in favor of a method of pricing which has persisted for a long time and to which investments and channels of trade have become adjusted.

I apologize for the lengthy answer, but it seemed to me necessary in order to state my reasoning for the conclusion that the adoption by this industry of a uniform f.o.b. mill net method would not be in the public interest. I have stated my opinions, and my evluations, as an economist and recognize that there may be factors of a non-economic nature that may dictate public policy and on them I express no opinion.

43199 Q. Now, Professor, turning to another subject, how would you define the phenomenon of dumping

A. I regard dumping as it is commonly used—the term is commonly used as applying to international trade, and I would define "dumping" as selling in a foreign market at a price which will yield a lower return to a domestic manufacturer than he receives upon his domestic sales.

Q. Well, would such concept apply to all cases of freight absorption?

A. Freight absorption in analogous to dumping; yes.

Q. Now, in the case of dumping in international trade, as you define it, what is the economic aspect or economic result of such international dumping on the market in which the goods are dumped?

43200 A. The direct effect of dumping upon the market in which the goods are dumped is presumably to lower the price in that market, or possibly to prevent it from rising. It would have a depressing effect upon price in the market in which the product is dumped.

Q. Does it have any effect upon competition in that market?

A. Yes; it presumably increases the competition in that market.

Trial Examiner Norwood: You are referring to foreign markets?

The Witness: Yes, sir. I am referring to the effect of the dumping practice upon the market in which the product is dumped.

Trial Examiner Norwood: Does cross-hauling in the United States have that same effect?

The Witness: You mean freight absorption?

Trial Examiner Norwood: Yes.

The Witness: I think it does tend to have that same effect, the effect of increasing competition in that particular market.

Trial Examiner Norwood: Well, does dumping, then, in the foreign market have the effect of reducing the price in that foreign market?

The Witness: No one can be certain that it will 43201 have the effect of reducing the price in that foreign market, but it adds an additional amount, the product being sold in that market, by an additional seller, and it would either have the effect of reducing the price or preventing it from rising, thus a depressive effect upon price in the market in which the dumping is done.

By Mr. Bond:

Q. Well, now, in international trade, if you have a product which has an inelastic demand, what would you say was the effect of dumping on the price in the home market where the goods are produced?

A. That is a very difficult question to answer, I think, for anyone. There are a number of considerations involved. But one possible effect recognized by economists is that by increasing the volume of goods produced it may have the effect of reducing unit costs, and quite probably would have that effect in an industry of high overhead costs, and thus would make it possible to sell to the buyers in the domestic market at a lower price than if the practice were not followed.

Q. And these effects which you have described in the case of international dumping,—would the same effects, in your opinion, be evidenced in the case of such dumping in national trade by freight-absorbing sales?

A. Yes, with the same qualifications. It is difficult

to trace all of the results, but the direct effect
43202 might very well be to reduce costs through increase in volume, and thereby make possible lower prices than might otherwise exist.

Q. And would it be your opinion that the existence of so-called dumping in national trade would have a tendency toward lower or higher prices to the consumer than would exist if such dumping were not practiced?

A. The effect of dumping in national trade tends to increase the number of sellers who are competing for the patronage of a given group of buyers. That would tend to have the effect of keeping prices in line with costs.

Another possible effect would be through increase in volume to the possible lower costs.

Q. Now, would you consider, as Professor Viner testified, at pages 15632 and 3 of the record, that the
43203 systematic practice of dumping can occur only when there is monopoly control in the market at which the commodity was being produced?

A. No. I think a degree of imperfect competition, much short of monopoly, would be adequate to explain the practice of dumping.

Q. Now, would you expect, Professor, that when dumping occurs in international trade it is always the case that the dumped goods are sold in the foreign market at a less price than the going price in that market for domestically-made goods?

A. I would not. I see no reason why the dumper, when selling in the foreign market, should deliberately sell the product at a lower price than the domestic producers of that market.

If, as is presumably the case, it is his desire to sell some additional volume, it would be his tendency to meet the price that existed in that foreign market.

Now, I can imagine situations in which there might be a prejudice against foreign products, or some other reason why the seller would have to offer a somewhat lower price to overcome such prejudice or obstacle. But as far as making it a deliberate policy of selling in the foreign market at a lower price than the foreign seller is selling, I do not think that that would be the normal result of normal business motives.

Q. Now, what would be the effect of abolishing dumping in the cement industry as compared with the effect of prohibiting dumping in international trade?

43204 A. In both cases they would have the effect of limiting the number of competitors who are selling to a given group of buyers.

Q. Would the abolishing of dumping in domestic markets have any influence or effect upon price competition?

A. No. I think that would have an effect upon the method of price competition, but I do not think it would have any necessary effect upon the degree of price competition.

Q. Well, how could this so-called dumping in national trade, particularly in this cement industry, be abolished?

A. By common ownership of all of the mills, or by collusion, or by Government order.

Q. Now, Professor, Counsel for the Commission, beginning at page 17639 of the record, propounded the following hypothetical question to certain economic experts called as witnesses for the Commission:

43205 "By Mr. Wooden:

Q. Assume that there is a general practice in the cement industry of mills quoting and selling only at delivered prices and of refusing to quote and sell f.o.b. mill.

"Assume that some mills and some groups or clusters of mills the basing points and that some other mills are non-basing points.

"Assume that delivered prices are the equivalent of base-point prices plus rail freight from base point to destination and that the lowest combination of base price plus rail freight determines which base-point price will govern at any particular destination.

"Assume that when delivered prices are made as described the delivered prices of all mills become identical at the same destination and that non-basing-point mills match the delivered prices at particular destinations of the basing-point mills.

"Assume that rail freight is ordinarily paid by the buyer to the railroad company; is then deducted from the face of the invoice and the balance paid to the seller.

"Assume that the mill nets of each non-basing point mill vary between its respective customers depending on the differences in freight to their respective destinations, higher mill nets being received from its nearby customers than from its more distant customers.

43206 "Assume, also, that when selling for delivery at destinations governed by other basing-point mills

the mill net prices of each basing-point mill also vary between its respective customers depending on the differences in freight to their respective destinations, higher mill nets being received from customers in territory governed by it than from customers in territories governed by other basing-point mills.

"Assume, also, that substantial shipments are being regularly made by basing-point mills into the territory governed by other basing points.

"Take all of those things together and then tell us whether or not, in your opinion, that corresponds to any sort of competitive method of pricing with which you have become familiar in the course of your studies and experience?"

I will now, Professor, ask you to answer the same question.

A. It is quite apparent that a method corresponding in all these respects to the one assumed would be a multiple basing-point method. I have indicated previously that I consider that the multiple basing-point method is a competitive method. I would say, therefore, that it does correspond to a competitive method of pricing, with which I am familiar.

Q. Professor, do you or do your not consider that the practices enumerated in this question tend to preserve the high cost antiquated mills as charged in this complaint?

13267 A. No. I do not think that this method has that effect.

There are certain characteristics of modern industry, such as the large investments of capital, relatively fixed investments, which tend to preserve mills even after more effective mills have been established, but I do not think that this method has that particular effect.

By Mr. Bond:

Q. Now, do you consider that the practices enumerated in this hypothetical question have tended to lessen the demand for cement?

A. I would not think so. As I indicated in previous testimony, I do not believe that the pattern of prices would be different under one method—this method, or a uniform f. o. b. plan, for example. And I see no reason

for thinking that it has had the effect of raising of prices in this industry.

Now, on some points, indeed, namely, the continual competition of a number of sellers for the patronage of a given group of buyers, which presumably results in them making suggestions to the buyers as to the
43208 most effective use of cement, in that respect I can see that the present method might be superior to an alternative method in this respect.

Q. Now, Professor, I call your attention to the following testimony of Dr. Viner, which appears beginning on page 15640:

"Questions by Mr. Wooden;

"Q. If the theory should be advanced that the system or method of pricing cement that I outlined in my long question is a method or system of meeting competition, what would you say as to that?

"A. I would say that if the term 'meeting competition' is supposed to be synonymous with a method of price competition, I would say 'No.' I would say it is a system of matching prices so as to avoid competition and that in a system of that sort I would interpret a price practice of that sort as intended to avoid price competition rather than as a routine carrying out of the prices of competition."

Mr. Bond: May we go off the record for a moment?

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Mr. Bond: On the record.

Trial Examiner Norwood: On the record.

Mr. Bond: I understand Counsel agreed, then, that in the last line of Dr. Viner's answer—

Mr. Wooden: Give the page and line.

Mr. Bond: —which comes at the top of page
43209 15641, the final phrase shall be corrected so as to read, "Carrying out of the forces of competition" and that we are in agreement that this was undoubtedly a stenographic error to use the word "prices" instead of "forces."

Mr. Wooden: All right.

By Mr. Bond:

Q. Now, Doctor, would you agree with that testimony of Dr. Viner?

A. No, I would not. It seems to imply that the meeting of a competitor's price is not a normal competitive act, but that the competitor ought to sell at a lower price.

Now, I believe that the meeting of a competitor's price is a normal competitive act, and a resolution to do that is a normal competitive attitude.

For example, if one cigarette—if one dealer in a town undertakes to reduce the price of cigarettes from, let us say, the usual 15 cents to 12½ cents, then the retailer who is still selling at 15 cents, and he sees that happen, I think he is acting in a normal competitive fashion if he reduces his price to 12½ cents. I do not think it is necessary that he should go him one better and go down to 10 cents in order to establish the point that he is really acting as a competitor.

And we could carry the point just a step further, that if after a time the price-reducing retailer had a change of heart and decided to go back to 15 cents, then I think the other retailer might very well heave a sigh of relief and go back to 15 cents also, and that that would be a competitive attitude.

I think the meeting of a price of a competitor, therefore, is a normal competitive act.

Q. Well, if we can say that meeting competition really required bidding lower than the other seller, what would be the logical result?

A. Well, logically; it cannot continue because there must be some end to the process. You cannot logically say that no man is a competitor unless he is always charging a lower price than his competitor, because then there is no end to that process.

Q. Now, Professor Viner testified, beginning at page 15644, as follows:

"Question by Mr. Wooden:

"Suppose you had a case where a base price at one figure were in effect on one side of a State line and a different base price in effect immediately on the other side of the State line and both of those base prices being put into effect by one base mill and recognized and observed and followed by its competitors.

"What competitive theory exists on which that could be explained?"

And Dr. Viner's answer was:

43211 "That sort of a pattern would demonstrate to me that there was an understanding of some sort in that industry that a leader was to be followed with respect to price in a certain area and that whether there was competition or not the competition, if it did exist, should not take the form of price competition in that area."

Now, Doctor, do you agree with Dr. Viner's statement?

A. No, I do not.

The assumption is made in the question that one mill has the power, presumably because of its geographic location relative to other mills, to determine a base price in a certain area. That area apparently runs over a State line. If they have that power, then they can, if they wish, fix one base price up to the State line and another base price on the other side of the State line.

Now, I do not see that any agreement is required with other mills to accomplish that. The other mills must meet that base price as set by this mill, unless, indeed, one of them wants to set such a low base price himself as will control the market. That possibility, of course, is always present and that must be taken into consideration by the mill in question here in setting that base price. But I do not see that an agreement is required to carry out such a practice.

Q. Now, I call your attention to the fact that Dr. Viner testified, beginning on page 15646, to the effect that

43212 if over a long period of time the base prices between two separate producing points have remained at a constant differential, he considers this to be a rigidity which would be wholly inconsistent with the existence of active genuine price competition.

I ask you, Doctor, do you consider that such facts show necessarily that there is no price competition?

A. No, I think not. I think that the two base prices might well have been set in the first place—presumably were set in view of production costs, and location of the mills relatively to other mills, and relative to markets, and that one set relationship had become established with the trade contacts that would be implied from it, that it is quite understandable to me that the normal self-restraint of businessmen, which we have referred to be-

fore, would be enough to explain the continuance of that relationship over a considerable period of time.

Various possibilities might explain it. It might be, I suppose, that the same company having two mills had established two different base prices, but even if they are different companies the forces that I have described would be adequate, in my mind, to explain this rigidity mentioned.

43213 Q. Now, I call your attention to Dr. Viner's testimony, beginning on page 15688, in which, in substance, he first points out that the pricing structure in what Mr. Wooden called his hypothetical industry completely resembles a competitive price structure in that all sellers have a uniform delivered price at each point, and then proceeds to point out that the difference between this price structure and a fully competitive price structure is the fact that certain sales are made at prices that yield different nets.

Do you agree with this testimony?

A. I have some difficulty with the term "fully competitive." It is not a phrase which has a universally accepted meaning among economists.

If Professor Viner means that the receiving of different mill nets would be inconsistent with a state of perfect competition, then I think one would have to agree with that. But it seems to me that that is—I have indicated before that perfect competition is merely a logical concept and not to be found in the actual world, and that it seems to me that a reasonable definition of "fully competitive" means that in an industry in which there are a number of sellers vieing for the patronage of a number of buyers, and in view of the basic characteritsics of that industry competition is unrestrained by anything but the normal self-restraint of individual business men, then I should say that industry was fully competitive.

43214 Q. What would you mean by the use of the term "poorly located plant"?

A. Poorly located plant? A plant may be poorly located from either one of two principal points of view: One, poorly located relative to market, and the other poorly located relative to the factors of production, such as raw materials, labor supply, power and so on.

Q. Well, now, do you think that this method of pricing

described in the long hypothetical question protects the poorly located plant more than some other method of marketing?

A. Well, you come back to the fact that we have two meanings of "poorly located plant."

If we have in mind a plant that is located poorly relative to market, then I think—were you applying it to this plan or the opposite?

Q. That is right.

A. —then I think that the present plan would probably have the effect of protecting an industry which is poorly located relative to market.

On the other hand, the opposite plan has the effect of protecting plants that are poorly located from the point of view of production, because it seems clear that if a plant, even if a plant were located poorly relative to raw materials, or other production costs, it would still have a market within its immediately surrounding area 43215 that would belong to it, and it would be protected against other mills which perhaps had otherwise located.

Q. When you said "the other plan" you meant the uniform f. o. b. mill plan?

A. The uniform f.o.b. mill plan; yes, sir.

Q. And under the present plan would there be anything which would make it profitable to locate a plant poorly with respect to markets?

A. No. The present plan—all that can be said is that the present plan would tend to reduce the disadvantage of being poorly located relative to market. Certainly no one under the present plan would deliberately locate a plant poorly relative to market because it would mean that he would have to sell most of his products on a freight-absorbing basis, which is obviously less profitable.

Q. Now, if Professor Viner testified, on page 15695, that in his opinion the pricing system of the cement industry as defined in Mr. Wooden's long hypothetical question would tend to produce and intensify a depression in our national economy, do you as an economist agree with that statement.

A. Well, there are a great many theories about depressions. Professor Viner has apparently implied one. My own belief is that the most important factor for recovery

is the establishment of confidence on the part of business men in the future of prices and profits such as will
43216 encourage them to an expansion and replacement of plant and equipment.

I do not see how the threat of a change—possibility, prospect of a change in a pricing method which has prevailed for a long period of time and to which investments have become adjusted and trade channels have become adjusted, —I do not see how the prospect of making a change would add to that confide ice.

Now, if, on the other hand, Professor Viner meant that we would have gotten out of a depression more quickly had some other method existed from the beginning of the depression, then it seems to me you would have to turn to such questions as the effect of this method upon the level of prices and possibly upon the flexibility of prices. I do not think that this method has an adverse effect upon either of these. So from that point of view I do not agree with the judgment expressed by Professor Viner.

Q. Now, assume that in the summer of 1932 the base prices of cement in the Middle West were generally advanced 40 to 50 cents a barrel; and assume that at that time the demand for cement, and therefore the consumption of cement, was declining; and assume that in the period from 1930 to the spring of 1932 the base price of cement had steadily declined, so that throughout the Middle West the base price of cement had declined from, say, $1.50 to 75 cents; and assume that at the base price of 75 cents all mills regarded this as unprofitable.

43217 Will you state to what extent you consider such an increase in price at that time was inconsistent with the existence of a freely competitive market?

A. I do not think it was inconsistent with a freely competitive market. If the decision to advance a price was made by some business man in view of all of the facts and probable effects that he has in mind, and other business men decided to follow that price change for perhaps similar reasons, it seems to me that is freely competitive procedure.

Trial Examiner Norwood: Is that contrary to the law of supply and demand?

The Witness: I do not think so, Your Honor. The business man must take into account the forces that are commonly called under the so-called law of supply and demand.

By Mr. Bond:

Q. Now, in response to the long hypothetical question which Mr. Wooden asked of Dr. Fetter, which I have already read to you in connection with Dr. Viner's testimony, Dr. Fetter testified that the conditions described in Mr. Wooden's question did not conform to typical competitive selling methods.

Do you agree with that statement?

A. I do not, because I do not conceive that there is any such thing as typically competitive selling methods.

43218 The selling methods, the form of competition, must vary from one industry to another, depending upon the circumstances and the nature of the industry.

You cannot expect to find the same method of selling and the same method of competition existing in the cement industry as you might expect in the wheat industry, for example; and you won't find the same in the wheat industry as you would find in the berry industry.

There is no one method in this actual world that could be called a typically competitive method.

Q. Now, in answer to a question by Mr. Wooden as to what was the wholesale price of cement under the pricing method that Mr. Wooden had outlined in this long hypothetical question, Dr. Fetter testified as follows—this appears in the record on page 17656:

"The word 'price' as applied to a market, priced in and at a market, is a freightless price. It is a price which does not include an element of freight. The word 'delivered price' is a compound term meaning both the price of the cement and the price of the freight necessary to transport the cement from the place at which it is sold to the destination."

And continuing, he said:

"Well, I should say there is no price in the ordinary economic sense. You are using the word 'price' in a different sense."

43219 Now, I ask you, Doctor, do you agree with that testimony?

A. No, I do not. I think that line of reasoning implies that price is something that is made up of a number of elements which can be added up together to make price, and those different elements are cost elements, and I do not think that an economist recognizes that price is simply the sum of cost elements. It is sometimes convenient—various

investigators have at times taken the consumer's dollar and tried to break that down, say, so much for freight, so much for this, so much for this. That is perhaps justifiable from the point of view of allocation of something of the price, but it is not true that the price is the sum of those things in the sense that it results from those various things.

So you can't start with the raw material and add to that the costs of processing the product, and then the freight, and finally come out to price. You simply come out to a group of costs.

Now, it is true that economists generally recognize that there is a tendency to approximation between cost and price, and that cost plus a reasonable margin of profit has its bearing upon the market, and through various steps, not necessary to go into, it influences price. But that is a different thing from saying that the sum of the costs equal the price.

That would be my first objection to it.

43220 Trial Examiner Norwood: The sum of the costs plus profits, isn't it?

The Witness: I beg your pardon?

Trial Examiner Norwood: The sum of the costs plus the profit?

The Witness: Even that does not equal price, Your Honor. The price is the thing which the consumer pays for the product. Now, it may be actually higher than the costs; it may actually be lower than the costs. It is not a summation of these different things.

A. (Continuing) Now, the second point on which I would object to that definition, is that it is almost universally recognized by economists that the value of any product arises from various utilities. One of these is form utility; it is the thing itself. Another is time utility. And another one is place utility.

We can't think of a thing having value except as we think of it at a certain place.

That price is a freightless thing seems to be implying that price is the amount that you pay for the thing itself regardless of place. Well, there isn't any such thing. I do not know of any—

Trial Examiner Norwood: If you add these utilities to a commodity, doesn't it change its nature, make it another commodity?

43221 The Witness: Yes—well—yes, it does. What you are buying—in this case what you are buying is a bag of cement at a certain time and at a certain place, and what the buyer pays for that is the price of the thing which he is buying.

I am reasonably familiar with the literature of economics, and I know of very few economists who have ever used the term "freightless price," or have expressed that concept.

Trial Examiner Norwood: Is the price that the buyer pays always the same as the price at which the seller sells?

The Witness: The price that the producer receives is not necessarily the price that the consumer pays, no. The amount that the producer receives, let us say, is not necessarily the price. I use the term "price" as meaning what is paid for the thing, not what is paid for the thing minus something else.

Trial Examiner Norwood: All right. Go ahead.

By Mr. Bond:

Q. Now, beginning on page 17694, in response to a hypothetical question by Mr. Wooden that a number of basing-point prices have been in effect without change for a period from January, 1933, to 1938, Dr. Fetter testified:

"Such rigid prices, I think, would be taken by any
43222 economist as indicating a lack of the normal or usual competitive forces at work."

Do you agree with the Professor's testimony in that respect?

A. No, for two reasons: In the first place, I think the normal forces of self-restraint that I have described before in an industry of this kind, large investments of capital and so on, would lead to that result; and the second is that there is no reason for assuming that the sort of practice or the sort of rigidity that is described here would be carried out under collusion, even if that collusion were assumed. That is to say, he starts with a represented rigidity of price, and he says he cannot imagine it happening under competition. Well, I say that it is just as easy to imagine it under competition as it is to imagine it under monopoly, or under that partial sort of monopoly which you might call collusion or agreement.

There is no reason in the nature of economic principles that I know of for assuming that a monopolist has any particular advantage in maintaining a stable—has any partic-

ular desire to maintain a stable price. Indeed, I think if you did have such a combination as could really dictate prices, as is implied in this answer, it would be more reasonable to assume that they would be changing prices from time to time, experimenting with the market to see which would be the most profitable price. So, I find it just
43223 as difficult to accept that assumption, and more so than to accept the assumption of competition.

43224 Q. Professor, the last piece of testimony which you commented upon just before the recess was Dr. Fetter's statement that where prices had not been changed from January, 1933, to 1938 at certain basing points that such rigid prices—I am stating it briefly—indicated a lack of a normal or usual competitive forces. Now, would you agree with Dr. Fetter when he testified further that: "Even rigidity of a few months would be very extraordinary in any industry where there were competitive conditions"?

A. No, I would not, for reasons that I think I have sufficiently indicated before.

Q. Now, beginning on page 17695, in response to a question of Mr. Wooden that a number of basing-point prices were advanced in July, 1932, from 85 cents to $1.25 a barrel, and with no other facts stated as to the antecedent course of prices, or the cost of manufacture, Dr. Fet-
43225 ter testified that this would seem to be an extraordinary phenomenon and he continued that his answer would not be affected if it were shown that the prices prior to July, 1932, were abnormally low because he considered the ability to raise prices by that amount in the very depths of the depression was indicative of a power of control over price.

Do you agree with that testimony?

A. I do not see how any economist would want to draw an inference or could draw any inference of absence of competition merely from the facts as stated.

When prices are advanced they are advanced first by some business organization. From my observation of business organizations, such decisions are taken quite deliberately in view of the whole complex of circumstances that existed at the time and in view of the anticipated results of such changes, and it would be extremely difficult for anyone to reconstruct all those things at a much later time and state precisely what was in the minds of the people who

made the price change, or the minds of the people who followed the price change once it had been made.

Now, I could well imagine that under the circumstances that you have described, one of the companies may well have concluded that the situation was a very unprofitable one, an intolerable situation, and they might have concluded also that it was equally unprofitable and
43226 intolerable from the point of view of their competitors, and they might have concluded that if they did make their price advance that there was a good prospect that their competitors would follow. In this particular case the competitors did follow.

Now, I do not see how an economist from that statement of facts can infer collusion. If the initiating firm in this case simply said to themselves, "This situation is intolerable. We believe it is also intolerable to our competitors. If we make a change we anticipate that our competitors will therefore probably follow, at least there is a good prospect of their following," then that is the normal working of competitive forces. If, on the other hand you want to assume that before the initiating company made the price change it got an assurance from the competitors that they would follow, then that is something else again, but I know of no way by which an economist with the techniques at his disposal can infer which of these two alternatives he could accept, so I would say this, that the facts as stated are not inconsistent, in my judgment, with the normal functioning of competitive forces.

Q. And would not indicate a power of control over price?

A. No, and would not indicate a power of control over price.

Q. And I think I know what you mean, Doctor, but to be certain: When in that last answer you spoke of a business organization, just how did you use that?

A. I meant a business man, or a company, board
43227 of directors of that company and the considerations that they would have in mind.

Q. Now, Dr. Fetter, in response to a question as to what is the actual or true price of cement under the basing-point system of delivered prices testified on page 17704 as follows: "In the matter in which the economist

is interested as to prices, it is the actual price of cement received by the cement company and paid for cement by the buyer, not including freight, that the economist would be interested in."

Do you agree with that statement

A. No, I do not. I think that the price that the economist is interested in is the price that is actually paid for the particular thing. One could think of various types of prices, one could think of a price at the mill, if buyers actually did come to the mill and buy, and if sellers were actually offering to sell at the mill. It is conceivable you could have a price there, you could have a price at the mill before the cement was—in the case of cement—before the cement was loaded into the freight cars, if that was the time and place under which cement usually was transferred. You could have the price before it was put in bags. You could conceivably, I suppose, have the price of the clinker before it was ground up, or you could have the price of the rock before it was ground up. You could have a price at any of those different stages. It
43228 takes a statement of fact of what is bought and sold, what time and what place, and it is that price that the economist—in which the economist is interested. I know of no technical definitions of the economist that would controvert that very plain fact.

Q. Now, Dr. Fetter testified that under the basing-point system of delivered prices there was no market in the economic sense. Do you agree with that statement?

A. I do not. I consider a market to be—I am thinking now of a place, a place where a number of sellers, vieing for the patronage of a group of buyers, do make rival offers to these buyers, and where the buyers compare the values of the things being offered and the prices that are being offered for sale. In the case of the cement industry, as it has been described, that place is the buyer's place of business, and that place is therefore a market, and therefore you have as many markets for cement as you have delivery points.

Q. Now, beginning at page 17732, and running on for a considerable number of pages, Dr. Fetter testified in substance that when the different cement companies meet the lowest price quoted by any competitor at any given destination under a basing-point system of selling, this

was not properly described as meeting competition and was not, in fact, competition at all.

Do you agree with that testimony?

A. No, I do not.

43229 Q. And what would be your reason?

A. No, I do not. The meeting of competition is, and may very well be, the meeting of the prices of a competitor. It does not involve, as I think I said in answer to a different question, it does not necessarily involve charging a lower price than the competitor charges. A manufacturer may well adopt as his price policy the policy of never permitting another competitor to undersell him, and that is a competitive attitude, and under those circumstances a competitor lowers his price and this manufacturer meets that price, then I say that competitor is acting competitively.

Q. Now, on page 17747 Dr. Fetter testified as follows: "An artificial system of pricing such as the basing-point system has to be policed by the industry."

Do you agree with that statement?

A. Of course, there is an assumption involved in the statement, involving the assumption that it is artificial, but waiving that and saying that a system or a method of this kind has to be policed by the industry, I do not believe that it would have to be.

Q. Now, at page 17751 of the record, Professor
43230 Fetter was asked the following question: "If it should appear in this record that less than 50 per cent of sales of the number of basing-point mills were made at their own basing-point prices, and that the remainder of their sales were made at lower mill nets, some of them as much as 60 or 70 cents a barrel lower than their own basing-point prices, what if anything would that indicate to you as an economist as to the average level of such basing-point prices?" And in response to that question Dr. Fetter testified: "It would indicate that the base price must be decidedly high to permit such large deduction, and such a great difference between the base price and the net realized price."

Do you agree with that testimony?

A. I do not. That answer, I believe, indicates that the person making the answer had not given due regard to the phenomenon of overhead costs, the difference be-

tween overhead costs and out-of-pocket costs. It is something like saying that if a railroad can afford to give a passenger a low passenger rate for Sunday excursions that they can—and that that rate is lower than their regular day-by-day rate, then that is proof that the day-by-day rate is too high. The explanation, of course,
43231 lies in the distinction between average costs and out-of-pocket costs.

By Mr. Bond:

Q. Now, on page 17755, in answer to the question by Mr. Wooden: "In your opinion, Doctor, can the basing-point system of identical delivered prices exist or be maintained as the result of competitive forces operating independently of each other?" Dr. Fetter testified: "I think not."

Do you agree with that testimony?

A. No, I do not. I think that for reasons that have been given a method of that kind could be explained by the operation of competitive forces in an industry of this kind.

Q. On the same page, the following question was asked by Mr. Wooden: "In your opinion, can the basing-point system of identical delivered prices exist or be maintained as an expression of the economic law of supply and demand?" Dr. Fetter testified: "I think not."

Do you agree with that testimony?

A. Well, I believe there is no one simple law of supply and demand, but a group of principles are commonly described under that term. Whether the method can exist as an expression of the force of supply and demand I would hardly know what that meant. If it does mean: Is the existence of such a method consistent with the operation forces of supply and demand? I would say that I think it is. There is no one pattern or method of marketing that is required in all industries and
43232 under all circumstances, to be consistent with the principles of supply and demand.

Q. Now, let me read the following from Dr. Fetter's testimony on page 17755. This question was asked by Mr. Wooden: "In your opinion can the basing-point system of identical delivered prices exist or be maintained without some form of cooperation among competitors?"

And on page 11757 Dr. Fetter answered: "It is my conclusion as a student of basing-point practice of various industries that it is of the essence of the basing-point practice that there is cooperation tantamount to an agreement. It requires a mutuality of behavior on the part of those engaged in the system. I have already indicated in part what it is that each one does or refrains from doing. The basing-point mill refrains from reducing its prices to prevent raids into its territories, permits the outsider to match the governing price there and in turn the other mill when its territory is invaded does not behave like a competitor but like a conspirator."

Do you agree, first, with his statement that basing-point practice requires cooperation tantamount to an agreement?

A. I do not. I think that it does require a degree of self-restraint on the part of individual men such as I have described as being characteristic of an industry of imperfect competition. I do not believe it requires agreements.

Trial Examiner Norwood: In that case, what 43233 would you determine the basing points?

The Witness: Basing point is determined by the—is the price which when added to freight gives the lowest—

Trial Examiner Norwood: I know; how would it come about, that one point would be a basing point as against another point?

The Witness: An individual mill has decided to set its price at such a point that that price when added to freight will give the lowest combination, lowest delivered price within a certain area.

Trial Examiner Norwood: Well, without any understanding in the trade in some way, how would it happen that some of these would be basing points and some would not—I mean how would it naturally come about that some would be basing points and some not?

The Witness: Basing point is a point where some manufacturer sets such a price as will give the lowest combination of mill price plus freight and therefore delivered price to some certain area, and by that fact it becomes a basing point. That, if I am not digressing too much, means to me one of the important characteristics of this

method,—distinguishes it from some other kind of basing point system in that the—

Trial Examiner Norwood: How would it come about that some manufacturers would make their prices
43234 that way based on their own mill, and some would not,—what would determine that?

The Witness: Any manufacturer can, if he wishes to do so, I assume from the facts as stated, set a price low enough so that he will be the basing point for a territory.

Trial Examiner Norwood: We know that, but just how would it work out without any understanding whatsoever that some would do that and some would not; what conditions or what motivation or what difference in conditions as between the mills would bring about the situation that some manufacturers would make their mills basing points in that manner which you have described and some would not?

The Witness: The self-interest of the manufacturer if he felt that it was desirable.

Trial Examiner Norwood: But what would be the considerations which moved the one and would not move the other?

The Witness: You mean why would a manufacturer want to become a basing point?

Trial Examiner Norwood: Yes.

The Witness: So that he could retain for himself the business of a nearby—no, I should not say "retain for himself," so that he could discourage the invasion
43235 of his nearby market.

Trial Examiner Norwood: You have intimated here that you think it would naturally come about that some of these places would be basing points and some would not. I wish you would describe that process, how that could come about without some understanding,—what conditions would it be that there would be one or two price leaders and the others would naturally follow? I want to know how that growth would come about.

The Witness: A manufacturer—let us start with this: A manufacturer sets a certain mill price. That mill price plus the freight will determine the prices in his surrounding territory.

Trial Examiner Norwood: That is what I want to know, why will one do that and another not.

The Witness: Another may decide that he prefers to accept the prices that are made by this first mill or by some other mill; for example, if a new mill is located in the territory.

Trial Examiner Norwood: In that way, then, prices would gradually evolve, would they not, or the price would establish itself?

The Witness: No, I don't think so, Your Honor. I think that the one mill is established in the first place, and has set this price and that creates a certain
43236 pattern of prices and another mill comes into the picture and must then decide whether it is willing to proceed on the basis of simply accepting the prices that are set by this other mill and thereby being a non-base mill, or whether it wants to discourage sales in its nearby territory at the cost to them of lowering their mill base price.

By Mr. Bond:

Q. It is a balancing, then, of two considerations, is it, factor?

A. Yes.

Q. Whether they would rather have perhaps fewer sales at the high price, they think that is more advantageous, or a larger volume at a lower price?

A. Yes.

Q. And he makes that decision according to his own self interest as to what he thinks will yield him the most profit?

A. Yes, I would assume so.

Q. Now, considering further this long answer of Dr. Fetter, do you agree with his statement as to the basing-point mill refraining from reducing its price to prevent raids into its territories?

A. I do not see how a basing-point mill can prevent raids into its territory. The other mills at a distance al-
ways have the privilege of selling in this territory
43237 on a freight absorption basis. Now, the basing-point mill can discourage that practice by lowering the base price, but that of course is at a cost to them and there will be a balancing of the advantage on the one hand of keeping out or discouraging the invasion of this market, and on the other hand of lowering the mill price.

Q. Now, do you agree with Dr. Fetter's statement that

the basing point mill permits the outsider to match the governing price there?

A. No, for the reason I have indicated. It is not a case of the outside mill permitting, or the base mill permitting the outside mill of matching their price. They have no way of preventing them from matching the price if they wish to do so except, I said, they may discourage that by lowering the mill price, but that is a costly procedure and may lead to bankruptcy of the company that would attempt to keep any and all invaders out of its market.

Q. Now, finally, do you agree with his statement that the other mill, when its territory is invaded, does not behave like a competitor but like a conspirator?

A. No, for the same reason.

43238 Q. If I may return for a moment to the question which was under consideration when Your Honor brought in very helpfully those questions about origin of basing points. I think the Doctor had not quite finished his answer. I would like to have that preceding question and its partial answer read.

Trial Examiner Norwood: You may.

(Question and answer read.)

By Mr. Bond:

Q. Had you finished your answer at that point?

A. I had finished my answer.

Q. Will you say, then, that in your opinion it does require cooperation tantamount to an agreement?

A. No, I do not think it would require such cooperation.

Q. Is this an adequate explanation that the individual members are following each his own self-interest?

A. It is to me; yes, sir.

Q. Doctor, referring back to the Examiner's questions about basing points and non-basing points, what would you expect to find in an industry like this, would you expect to find that all of the mills had adopted the same pricing practice of having basing points, or, on the

43239 other hand, of not having basing points, or would you expect that each individual producer, acting in his own self-interest, would perhaps reach a different decision; at least some differences in the decisions of a group?

A. Well, if you refer to the fact that some would de-

cide to operate as base mills and some as non-base mills, I would expect to find some variety.

Q. Now, Professor, would you agree with Dr. Fetter when he says on page 17776 that the basing-point method is not in accord with the public interest?

A. I assume he refers to the multiple basing-point method as described in this industry. No, I would not agree with that. I recognize that there are certain arguments against that method. There is cross-hauling cost, but I would consider on the other hand that it had certain positive advantages, maintaining point by point com-
43240 petition between a number of sellers for the patronage of buyers at each individual point. I recognize, as I think I have said before, that there is a competitive pressure placed upon the manufacturer in fixing his price under this system, that there is also a competitive pressure placed upon price under an alternative system. I do not think that the degree of that pressure is greater in the one case than in the other, and when I find those two, find that particular consideration is in balance then the continual competition for buyers' patronage is a positive advantage in favor of this one, and then finally when I take into consideration the fact that the industry has been long established on this basis, that the capital it has invested, that trade channels are adjusted to this, workers have established their residences at places, and in degrees determined by volume of business existing between different plants that there is a presumption in favor of the existing method.

43241 Q. In that matter of—the fact that this now exists, and which you speak of as a presumption, Doctor, is that a controlling factor in your reaching your opinion that you have stated?

A. No, it is not. I do not see how any realistic answer, however, can entirely leave it out of account. I added it as one factor, perhaps a minor factor.

43242 *Cross-Examination by Mr. Wooden.*

43243 Q. Dr. Griffin, referring to your last answer—to the last question on direct—would you say that whether the basing-point system in the cement industry is in accord with the public interest depends upon whether a system in that industry is competitive or non-competitive?

A. Believing as I do in the valuable force of competition, yes, I would say that although logically I do not know that that would necessarily follow.

Q. You mean to say, then, that if the basing-point system, as used in the cement industry, is not competitive then on the other hand that it is not in accord with the public interest?

A. That involves a little difficult assumption for me to make. I would regard it as being competitive, and although as I have said before the form of competition is different than it would be under some alternative methods, that the degree is not less and that this competition does have the effects of—the desirable effects competition would be expected to have.

Q. But if the basing-point system in the cement industry is non-competitive, would you nevertheless contend that it is in accord with the public interest?

43244 A. I do not see how I could answer that more specifically. I say that the multiple basing-point method appears to me to be a competitive method and to yield the results that are normally to be expected from competition, and that those are the results—

43245 Q. Is it your answer that the prevention of non-competive conditions is in accord with the public interest?

Mr. Bond: Doesn't Your Honor think his answer covered that?

Trial Examiner Norwood: Practically. If he can answer it more satisfactorily to the questioner, why, he may do so.

A. I do not think I can answer it any more satisfactorily than I have.

By Mr. Wooden:

Q. Can you answer that question "yes" or "no"?

A. No, sir.

Q. Why not?

Trial Examiner Norwood: Do you think it is in the public interest to prevent restraint of trade and monopolies?

The Witness: Are you willing to rephrase it in

43246 that way?

Mr. Wooden: That is, I think, a fair summation of the sense of it.

The Witness: Is it in the public interest?

Trial Examiner Norwood: To prevent monopoly and restraint of trade.

The Witness: Generally speaking, yes.

By Mr. Wooden:

Q. You also testified, however, didn't you, to the effect that the system as outlined to you in the question, on the other hand could be the result of collusion or agree-
43247 ment, didn't you?

A. I do not think I used the word "system," but with that minor correction it would be the sense of my testimony that such a method might conceivably, I suppose, exist as the result of such agreement. Now, I emphasize the word "conceivably" because it is difficult for me to believe that a method of this kind covering as large an area as the United States, with as many different companies' mills involved as in this case, that a method existing under those circumstances could be arrived at or maintained chiefly by that,—by collusion and agreement. I would draw the inference from the existence of such a method that there must be more natural economic forces underlying it.

43249 Q. In your preparation for your testimony here, Dr. Griffin, what have you done?

A. Well, for a number of years I have been a student of marketing, for something over 20 years; I have naturally been interested in the basing-point method of selling, as a marketing method. In the preparation for this testimony I have read as much of the literature as I had time to read beyond what I had already read, articles and literature dealing with the question.

Q. Well, since, you were retained to testify here, what preparation have you made?

A. Well, I have, as I have indicated, done more extensive reading of the subject.

Q. Tell us what you have read.

A. Well, for one thing I of course reviewed publications that I had seen before, those of the Federal
43250 Trade Commission, read—

Q. On the basing point in cement or generally?

A. The two publications, one, I think a report on the cement industry particularly, and the other on price bases—in other words, read the literature on the basing-point method as applied in other industries.

Q. Tell us what?

A. I have seen the published studies in the hearings before the T.N.E.C. in the steel industry, for example.

Q. Anything else?

A. Something on the sugar industry.

Q. What on the sugar industry?

A. Something about the method of marketing.

Q. You mean before the T.N.E.C.?

A. No, I did not see—

Q. What did you read on the sugar industry?

A. I cannot recall particular things right now. It was descriptions that appeared, that existed in the marketing books.

Q. Did you read court opinions on the Sugar Institute case?

A. I recall reading that decision at the time it came out, but I have not refreshed my mind on it, since it has been a number of years ago.

Q. What else have you read since you began to prepare for your testimony here?

43251 A. I think that pretty well covers the reading matter: I cannot remember every particular article. I have been thinking about it for some time, and naturally—

Q. What else have you read on the subject of basing-point systems or basing-point methods of marketing prior to the time that you began reading with a view to appearing here as a witness?

A. It is very difficult for me to enumerate them. I have, as I say, been interested in the literature on marketing for a great many years, and any articles that came out I have read, and recall reading articles by Professor Fetter, Professor Commons, and dealing particularly with the Pittsburgh Plus Plan. I have read a considerable amount—I read the court decision,—the decision of the Commission in the case of the Pittsburgh Plus. If I remember rightly, it was a number of years ago, waded through several volumes of testimony given in that case.

Q. Can you name any other writings or studies or published material relating to basing-point systems that you have read?

A. I have forgotten whether I mentioned Dr. Fetter's "Masquerade of Monopoly." I have read that. I read the hearings before the Senate Committee on Basing Points.

Q. Do you refer to the hearings in 1936 before the Wheeler Interstate Commerce Committee?

A. It was the same, yes. I read some of the stud-
43252 ies made under the N. R. A., I think, by the N. R. A., by students working in N. R. A. organizations on geographic price variations.

Q. Was that a study prepared by Dr. J. Morris Clark and many others?

A. No, that one was not. The name of the author slips my mind just at the moment. It was a large mimeographed publication on geographic price variations.

Q. Anything else that you can recall having read in the course of your accumulated information about basing-point systems?

A. I think that covers it pretty well.

Q. Did you read any portions of the record in this proceeding?

A. Oh, yes. I beg your pardon. I should have mentioned that. I have read some.

Q. When did you do that? Did you do that after you knew you were going to be a witness?

A. Yes. After I had consulted with Counsel for the defense.

Q. What portions of the record in this proceeding did you read?

A. Principally the testimony of the economic witnesses, although I did go through the testimony of some of the industry witnesses.

Q. What proportion of the transcript of testimony will you say you read in this case?

43253 A. As a percentage of the total transcript, I imagine it is very small. It has been a very long transcript, but I think I have read the—I believe I am right in saying that I have read all of the testimony of economists and some of the testimony of industry witnesses.

Q. Dr. Griffin, when you say that you in preparation for your testimony here had read some of the testimony of industry witnesses in this proceeding, did you mean witnesses who were called by the Respondents and examined by them on direct, or what did you mean?

A. Well, I assume they were called by Respondents. Frankly, I can't remember the names of the men whose testimony I did read, but I recall that they were officers of cement companies. I do not know them personally. The names did not register with me.

Q. Do you recall whether or not they were cross-examined by Counsel for the Commission?

A. Yes.

Q. Did you read the cross-examination of those witnesses?

A. It has been some time ago, but, as I recall it, I did.

43254 Q. Would you say that whenever you read the direct testimony of any witness you also read the cross-examination?

A. Oh, no; I wouldn't say that. I have not made a consistent study of the record in any such way as that.

Q. How did you determine which witnesses' testimony you would read?

A. That was a matter of limitation of time. A considerable amount of the testimony—I did not have to read all of it.

Q. Well, that goes to the question of what proportion you read. How did you make the selection as to which witnesses you did read?

A. Frankly, I couldn't say how. Probably on the basis of time that I had at the time I happened to receive the testimony.

Q. Did you have any assistance from anyone in pointing out certain industry witnesses whose testimony you should read?

A. No, I did not.

Q. You just browsed through anything you cared to without anyone saying you should read this particular witness' testimony?

A. I can't recall that there was a suggestion that I should read this particular thing.

Q. Do you mean to say, then, that you read what you did read without any suggestion from anybody that that should be included in what you read?

43255 A. Well, I received the mimeographed transcript through defense attorneys. I suppose that might be regarded as a suggestion. If it was regarded as a suggestion, it was not followed completely, because I did not read all of it.

Q. Did you get any suggestion from anyone to the effect that you should read a given witness' testimony?

A. I don't remember.

43256 Q. Did you read as many as 5,000 pages out of the 20,000?

A. Probably not.

43259 Q. In answering the various hypothetical questions propounded by Mr. Bond, did you confine yourself in answering them to the things that were stated in the questions only, or did you draw to any extent upon your accumulated information obtained by reading?

A. Of course, in making the answers I no doubt draw upon my knowledge of marketing practices and the functioning of economic principles in general. I have attempted in every case to bear in mind the assumptions that were made and to answer on that basis.

43265 Q. What is your testimony now, Dr. Griffin?

A. In answer to what question?

Q. As to whether or not, in your opinion as an economist, the methods of marketing cement as outlined in the hypothetical questions were the development and outgrowth of natural competitive forces?

A. I do not think that an economist could testify whether the methods of marketing as outlined in the hypothetical questions were in fact the outgrowth of normal competitive forces.

Q. Didn't you express the opinion that they were?

A. I do not recall having done so, sir.

43266 Q. Dr. Griffin, do you think it is a scientific or scholarly approach to a disputed question to ignore evidence that might help you in forming an opinion on it and then nevertheless give an opinion on it?

43267 A. Well, it might possibly apply to the case with which we are dealing. I have attempted, as I have said before, to answer these questions on the basis of the assumptions that were made and in the light of what I understand to be economic principles, normal function, economic forces.

Q. And you failed to take into account evidence in this case except such as was made available to you by Respondents' Counsel?

A. Oh, in answering the questions, as I have said, I was taking into account the assumptions that were made and not relying upon this factual testimony to which you have referred. I have explained that before.

Q. But you did study certain factual aspects of this record, a comparatively small part of the factual aspects?

A. Oh, yes. I am interested in the whole question. But my testimony here was based on the assumptions in the questions.

43269 Q. Do you think a scientific man giving expert testimony should ignore evidence on the subject he is testifying about that was readily available to him?

43270 A. It is my impression that a professional man giving testimony and having certain assumptions placed before him should proceed on the basis of those assumptions.

Q. What would be your conception of a professional man's duty if he knew there were some other facts at variance with the ones in the hypothetical question and did not say anything about them?

A. What would be his duty?

Q. Yes.

A. Well, for one thing, he might feel under obli-

43271 gation then not to testify at all, but if he is to appear and testify, it seems to me that he must testify on the basis of the assumptions as they are set forth to him.

Q. You do not think he ought to volunteer any information that he has that is an addition to the hypothetical question?

A. You mean as a witness?

Q. Yes.

A. While serving as a witness?

Q. Yes.

A. No, I do not think so.

43273 Washington, D. C.,
Tuesday, September 10, 1940.

43274 DR. CLARE E. GRIFFIN thereupon resumed the
43275 stand and testified further as follows:

Cross-Examination by Mr. Wooden (Continued).

Q. Dr. Griffin, in your preparation for your testimony in this proceeding, did you have contact with other economists?

A. Yes. I talked with a number of other economists about the problem of basing points.

Q. Which ones?

A. A number of my own colleagues at the University of Michigan, people who I come in daily contact, and a number of others.

Q. Who are the others?

43276. A. I recall talking with Professor Cunningham, the Massachusetts Institute of Technology, and Professor Burns.

Q. Is that Professor Burns, Professor Arthur R. Burns, of Columbia University?

A. I believe it is Arthur R. Burns, author of the

43277 "The Decline of Competition."

Q. Did you also have any contacts with Dr. J. Maurice Clark?

A. Yes. At meetings of the American Economic Association.

Q. I mean in connection with the preparation of your testimony in this case.

A. Well, I suppose in an indirect way, preparation for testimony. I have not discussed any particular answers or questions.

Q. What do you mean by "indirect way"?

A. Why, I have discussed the question of basing points after I had been associated with the defense counsel.

Q. Did you have correspondence with Dr. Clark?

A. Professor Clark, no; I think—

Q. Did you meet them in personal conference?

A. Yes.

Q. Where?

A. Well, I met those two gentlemen at a conference in New York.

Q. Who were present?

A. There were several economists present, Mr. Cunningham I recall, Professor—Dr. David Friday.

43278 Q. Who else?

A. Shall I proceed, sir?

Trial Examiner Norwood: Yes.

A. Dr. deChazeau, Professor Vaile.

A. I have also discussed the case with Professor Hoover, of my own university. I say "discussed the case." I mean discussed the question of basing points. It is not this case as a legal case.

Q. You mean you discussed the economic aspects of basing-point systems; is that what you mean?

43279 A. Yes. I recall a round-table discussion at my own university on matters that related very closely, certainly involved basing points.

Q. Was there only one conference in New York?

A. Yes.

Q. And when was that?

A. I can't remember the date. It was about three years ago, I believe.

Q. Since this case began?

A. Yes.

Q. At that time were you retained to appear as a witness here?

A. No.

Q. Were you retained to consult with them, to assist them in any way in connection with this case at that time?

A. I am trying to answer that in the strict meaning of the word "retain." I had not been.

Q. Had you agreed to supply your services in connection with this case at that time?

A. I do not think I had.

Q. What was the exact status or form of the arrangements that you had at that time?

A. I had no arrangements with the defense counsel at that time.

Q. Well, what were the circumstances under 43280which you attended this conference,—what led you to attend it?

A. I was invited by defense counsel to attend the conference at which a number of economists would discuss the question.

Q. Did you receive compensation for your attendance?

A. Yes.

Q. And your expenses?

A. Yes.

Q. Did you continue to receive any compensation up to the time you knew you were going to be a witness?

A. When I—only in return for specific services.

Q. And you did perform specific services from time to time?

A. I made a—write a memorandum on,—expressing some of my views relative to basing points. I was remunerated for the time taken in the preparation of that memorandum.

Q. That was before you knew you were going to be a witness?

A. Yes, sir.

Q. When did you first know you were going to be a witness?

A. I cannot recall the exact date, but it would be between two and three years ago. It was after this conference to which we have referred.

Q. And after you knew you were going to be a witness did you continue to perform any services in connection with the case and before you appeared as a witness?

A. Yes.

Q. What were they?

43281 A. Wrote memoranda from time to time relative to various aspects of the basing-point question, expressing an opinion as an economist.

Q. And were those submitted to these other economists with whom you had met?

A. Not to my knowledge; not submitted by me, sir.

Q. What did you do with it?

A. For the defense counsel, I gave it to them.

Q. Did you receive memoranda prepared by other economists?

A. I do not recall having received memoranda prepared by other economists,—not any specific, not specifically referring to this case.

Q. In connection with your services during that period or in connection with your preparation for your testimony, did you examine reports that were prepared by Drs. Clark and Burns for the industry?

A. I never had the benefit of seeing reports.

Q. Had you heard of them?

A. Yes—that is, I beg your pardon. I am not sure that they were referred to as reports. I was aware of the fact that Burns and Clark had been studying the question of basing points in this industry. Now, whether their studies took the form of reports, I do not know, and I did not see the results of their study.

Q. Well, did you see the results of their studies
43282 in written form?

A. No, sir. I saw articles written by J. M. Clark, and published in the economic journals, and was present at a meeting of the Economic Association at which he read papers on the subject.

Q. Did you learn in any way from Drs. Clark and Burns, or anyone else, what the nature, the results of their study for the industry had been?

A. No, I don't think so.

Q. Didn't they express their opinions to you in the course of your contacts with them?

A. My contacts with those two gentlemen were very slight, as a matter of fact.

Q. But do you say they never expressed any opinions to you about the results of their studies?

A. You mean judgment as to the conclusion of their study; no.

Q. Well, anything about the basing-point system?

A. Why, I think they answered questions that I asked them of a factual nature, and I think that was about all. I cannot recall now what they were. They were not of great importance.

Q. You mean questions of fact on the nature,—regarding the cement industry?

A. Yes, I suppose some of them have had to do with the cement industry. May I add to that?

Q. Yes.

43283 A. When I say of a factual nature, I do not know that I can be too precise about that. Questions might have been asked that would involve explanations of things, theories of things. I am dealing less realistically with the cement industry, and I am honest to say I cannot recall what questions I asked them or what information they expressed.

Q. In other words, isn't it a fair statement, without any information or knowledge regarding some of the factual conditions in the cement industry, you really had no basis on which to form any economic opinion; isn't that correct?

A. Well, if the implication is intended I did not have any factual information; I think that would be incorrect. I think I said the other day my first reading on this subject of basing point, basing-point method in the cement industry, was through reports of the Federal Trade Commission, one dealing specifically with the cement industry, the other with price bases.

Q. Doesn't the fact that you sought and secured some factual information from Professors Clark and Burns mean that you thought your factual foundation was not sufficient in those respects to form an economic opinion?

A. Oh, anyone would be glad to get factual information from any place they could get it, obviously.

Q. And in order to form a better basis for an opinion; is that right?

A. Well, as an economist, yes.

43287 Q. Before you reached the conclusion that co-operation tantamount to an agreement was not re-

quired in order to maintain the basing-point system, had you looked for and examined and considered all available evidence of cooperation?

A. In the first place, I would like to have my—

Mr. Bond: Do you mean in all industries?

Mr. Wooden: No. In the cement industry.

The Witness: Could I have my— Are those the exact words of my answer, and to what question were they given as an answer?

By Mr. Wooden:

Q. I do not think you need the exact language. Isn't it clear to you that what I have asked you is the substance of your testimony?

A. Always an answer of that sort is given on the basis of certain assumptions.

Q. Well, what is the answer to my question as to whether before you reached the conclusion that cooperation was not required, had you looked for and examined and considered all available evidence of cooperation?

A. I do not recall having made any general
43288 statement concerning basing-point methods, basing point, that there would be no basing-point methods or no basing-point situations, that would be exceptions to that general statement.

Q. I am talking about the conclusion you reached about that matter in regard to the cement industry. Now, limiting it to the cement industry, what is the answer to the question?

A. Limiting it to the cement industry as described in the hypothetical questions, I believe it was the sense of my answer that cooperation tantamount to an agreement was not necessary, in my judgment, to explain that kind of a system, that kind of a method.

Q. Well, now, my question still stands as to whether you ever looked for or examined or considered available evidence of cooperation before you reached any such conclusion.

A. Obviously in answering that question I was asked to answer it as an economist on the basis of the assumptions. Now, I assume if the assumptions cannot be defended, that is another matter, but that is not my responsibility.

43290 Q. What was your testimony regarding self-restraint and the adequacy of that to account for the methods of marketing employed in the industry, as you understand it?

A. I think I was never asked whether individual self-restraint was adequate to explain the whole thing. What I did say was that there were several factors of an economic nature which when taken in combination I thought was adequate to explain the existence of the basing-point method.

Q. On the ground of individual self-restraint?

A. One of those factors was individual self-restraint; yes, sir. That is, with that combination of factors that the basing-point method might well exist without the collusion which I assume is the opposite of this individual self-restraint that you are speaking of.

Q. Or cooperation?

A. Yes.

Q. And without any element of mutuality or reciprocity?

A. I do not understand what you mean by those words in this connection. They have not been used, so far
43291 as I can recall, so far in the case.

Q. Well, is there anything cryptic about the words "mutuality" and "reciprocity"?

A. They have a great many different meanings.

43294 Q. Well, as I understand it, then, Dr. Griffin, you are unable to answer the question because you do not know just what I mean by "mutuality" or "reciprocity."

A. That is correct.

Q. Do you believe, Dr. Griffin, as an economist, that competitors form an organization and cooperate in order to keep competition free or to make it more severe?

A. They might well do so.

43296 Q. Do you mean to imply that the consensus of opinion among modern economists is different from that of the older economists on the subject of competition?

A. I think I am right in saying that much more conscious attention has been given to the phenomena of what are now called imperfect competition. I think that is perfectly clear that more attention is given now to that problem than was in the past.

Q. Well, don't you believe that the older economists knew very well that there was an abundance of imperfect competition?

A. Yes, I think many of them did.

Q. Didn't Adam Smith?

A. Adam Smith, I think, is a good example of one who did, who was quite realistic, even those who were, even those who talked in terms of perfect competition; I think I stated in my direct testimony that I did not mean to imply that they were unaware of the fact that those assumptions did not apply to the actual world.

Q. In other words, the concept of perfect competition, after all, is a useful concept, isn't it?

A. Oh, yes, yes.

Q. Just like the concept of a perfect vacuum?

A. Yes, for some purposes.

43297 Q. Do you mean to imply that modern economists who criticize the basing-point system are unrealistic in considering—unrealistic in assuming conditions of perfect competition are possible?

A. It seems to me there are two barrels to that question, too. The economists might criticize the basing-point method on any one of a number of grounds, I think if they do base their conclusions upon their opinion or upon the fact that basing-point method does not conform to some preconceived concept of perfect competition, and that that is the—is a major factor in their reasoning, that leads them to that conclusion, then I think that they would be unrealistic.

Q. As a matter of fact, isn't the concept of perfect competition which you say is useful, isn't it useful just for that purpose, to compare actual conditions with that concept to see how far short of the concept the actual conditions are?

A. No.

Q. Well, why not? Then, what is it?

A. There would be no point in setting up a concept just to compare something else with it, to see how far that thing was from the thing you are going to compare it with.

Q. What is the concept of the usefulness of perfect competition if it is not that?

A. I think you used a good analogy yourself a few minutes ago of the concept of the perfect vacuum.

43298 The economist has to rely to a considerable extent upon deductive reasoning, and if he has—and there-

fore because of limitations of the human mind he can only deal with a certain number of assumptions at the same time. Therefore, we assume certain rather simple, make certain rather simple assumptions, and one proceeds then to deduce cause and effect from those assumptions.

Q. In order to measure the degree of departure from a perfect vacuum you have to have some theoretical concept of what a perfect vacuum is, don't you?

A. It would be quite—it does not seem to me that that states the relationship correctly. They don't set up the concept of a perfect vacuum in order to measure the difference between it and something that is not a perfect—

Q. But after it is there, it is not useful for that purpose?

A. No. Well, I am not a physicist, I don't know.

Q. You do not see any usefulness in the concept of perfect competition as a theoretical ideal by which or against which you would measure other conditions to see how far, how much of a departure they were from this theoretical ideal,—you do not see any usefulness in that?

A. No, I do not. I think now I see your line of reasoning: Can we set up this thing which we call perfect competition, that is ideal, that is good, and make those assumptions, and then examine an actual situation in the world and see how much different that is from per-
43299 fect competition in order to measure—in order to determine how far that departs from the ideal and get —no, I do not think any economist can—

Q. What is the—

Mr. Leisure. Let him answer.

A. (Continuing.) —I do not think any economist I would—

Trial Examiner Norwood: Go ahead.

A. —I do not think that any economist that I know of would defend the use of the concept of perfect competition for that purpose.

By Mr. Wooden:

Q. For what purpose is it useful if not for that?

A. I have just explained that I think—

Q. And that is all you have to say about the usefulness of it?

A. Yes, I think so.

Q. Would you say that agriculture in this country has more nearly approximated conditions of perfect competition than manufacturing industries?

A. In some respects, yes. It is hard to take all of those, of the characteristics of competition and measure each one of them, but it is often used as an illustration through classroom uses of something that approximates in some respects perfect competition.

Q. You have used it yourself, have you, for purposes?

A. I suppose I have.

Q. In so doing weren't you comparing it with
43300 the concept of perfect competition?

A. Used it as an illustration of an industry, or of a trade that approximated in some respects the conditions of perfect competition. Now, I do not quite get the point of your question.

Did I answer your question?

Q. Well, I simply meant whether you had used agriculture in your own classes as an illustration of an industry that approached or approximated the concept of perfect competition.

A. I suppose I have.

Q. Have you used any other industries for that purpose?

A. That is a very difficult question to answer. I have been teaching economics for a great many years. I cannot recall the illustrations I have used.

Q. Have you used the commodity exchanges and the stock exchanges, also, as approximating examples of perfect competition?

A. Yes, perfect competition in some respects. In some they obviously would not be there.

Q. At any rate, they were the nearest approach to it, to the concept that you could find among the industries that you were familiar with; is that right?

A. For some purposes, yes.

Q. Now, is it in a state of perfect competition that you would expect prices to become and remain identical?

43301 A. Oh, to expect prices to be— Would you mind separating—would you separate the question; to be identical, I would expect the prices of identical units of a product to be identical in any market when you had perfect knowledge on the part of the buyers, well-informed buyers.

Q. In other words, under the concept of perfect competition?

A. Well, that is not all that is involved in the concept.

of perfect competition. I am saying you would not have to assume all the conditions of perfect competition in order to come to that.

Q. Well, isn't it a condition of perfect competition that you would expect prices to become and remain uniform?

A. Do you mean is it ony under such conditions that I would expect it, or would I find it there?

Q. Would you find it there?

A. Yes, I would find it there, but you would find it also in a number of places where you did not have perfect competition.

Q. Isn't it in such an assumed state of perfect competition that the older economists theorize that prices would become identical?

A. Well, I suppose they generally had that in mind, but as I have just said I do not think that part of—all of the assumptions of perfect competition were necessary for them to come to that conclusion.

Q. But that is what the older economists theorized, wasn't it, that under the conditions of perfect com-
43302 petition prices would become identical?

A. In a given market, yes.

Q. Now, as I understand it—

A. For identical quality, product, and so on.

Q. As I understand it, you also say that under some conditions of imperfect competition you would also expect prices to become identical.

A. Yes. If you had identical products and well-informed buyers, then I do not see how in any particular market prices can help being identical, well-informed buyers are not going to pay more than the lowest price offered in the market.

Q. When you got up to the point of imperfect competition that was collusive in nature, you would then expect the prices to become identical, would you?

43303 A. Collusion is not ordinarily thought of as one of the economic characteristics of imperfect competition. If you are trying to read that into my definition it does not correspond to my definition.

Pardon me, I do not mean to question your use of the term.

Q. As a matter of fact, isn't it imperfect competition all the way up from a point short of perfect competition

to a point of perfect monopoly, isn't that all imperfect competition in that category?

A. Yes, that would be true.

Q. Do you mean to say that you expect identity of prices under conditions of imperfect competition just as you do in conditions of perfect competition, given the same commodity and other things being equal?

43304 A. If you are trying to measure the degree or the extent of imperfection—I could not answer the question. I would say that identity of price is not inconsistent with perfect competition and is not inconsistent with imperfect competition, so the facts of identity of price could not be taken as an indication of one or the other. I say this consistently.

Q. In other words, identity of price may spell collusion just as much as it does competition?

A. Identity of price might exist under collusion as well as under perfect competition.

Q. And just as well as under imperfect competition?

A. Yes.

Q. Well, you would expect, would you not, that as competition became more and more imperfect passing through the collusive stage up to a genuine monopolistic stage, where the business was all controlled under one ownership, you would expect perfect monopoly, also to produce identity of price, wouldn't you?

A. I could not answer that generally in the affirmative, no. I expect a perfect monopoly to vary its prices whenever it is possible to do so, and if you have a perfect monopoly it has considerable possibility of doing so.

43305 Q. At any given time, a perfect monopoly would, of course, have an identical price, wouldn't it?

A. No.

Q. Unless it wanted to discriminate, unless its purchasers—

A. Well, it probably would want to discriminate among its purchasers.

Q. In other words, would you say that discrimination itself is indicative of monopoly power?

A. No. As a monopolist might want to use the power—I prefer to use "variation in price." To avoid argument of just what that means—but the use of different prices does not establish the existence of monopoly, certainly.

Q. You do not mean to say, do you, Doctor, that a

theory of perfect competition producing identical prices as conceived of by the older practical economists is support, do you, for the theory that imperfect competition also produces identical prices?

A. The question again implies that it is all of the conditions of perfect competition that create the tendency toward the identical prices. Now, as I said before I think all that is necessary to lead you to expect identical prices is an identical product being offered to several buyers by more than one seller, and the buyers being well informed. Now, those are not all of the conditions of
43306 perfect competition.

Q. Do you claim that the older economists, classical economists, when they conceived a perfect competition producing identical prices, that that supports the contention that imperfect competition also produces identity of prices?

A. I do not think the older economists,—if the term "perfect" and "imperfect" competition had been put to them,—would ever have asserted that perfect competition was required to produce identical prices.

Q. In other words, you think the older economists in their theories as they put them in the books would support the theory that imperfect competition likewise produces identical prices; is that right?

A. Well, since the older economists by definition never heard of the term of "imperfect" competition, I do not know how that question could possibly be answered.

43308 Q. Isn't the practical question in dealing with conditions of imperfect competition to ascertain the degree of imperfection?

A. It would be very difficult to do. I do not know how anyone can determine the degree of imperfection, because the degree of imperfection arises out of departures from the assumed abstract, abstraction, on any one of a number of points. One thing that brings about a degree of imperfection of competition is the fact that products are not identical. The products of different sellers are not identical. Another thing is the fact that the number of sellers is limited, and so on. I do not see how you can with all of those variables, how you can measure the degree by which any particular industry departs from having a condition of perfect monopoly or perfect competition.

May I have the last part of my answer read?

(Last part of answer read.)

43309 The Witness: Leave out "perfect monopoly"; perfect competition.

Trial Examiner Norwood: We will take five minutes' recess.

(There was a short recess taken.)

Trial Examiner Norwood: Proceed.

By Mr. Wooden:

Q. Dr. Griffin, wouldn't you say, as an economist, that the practical question is to ascertain the quality, the kind of imperfection that obtains in an industry as well as its degree?

A. On the question of kind and degree I would like to say—I hope it is responsive—that the distinction between perfect competition and imperfect competition as used by a professional economist is not primarily a question of degree. It is a question of kind. The very concept of perfect competition and the emphasis that has been given to it arises from the realization that there are a number of factors in modern business, such as the differentiation of the product, limited number of buyers and sellers, and so on, that give you a different kind of competition. The degree of imperfection is not involved in the concept. You simply have competitive forces under conditions of imperfect competition. You have competitive forces working themselves out in a different framework, in different ways, than you have under conditions of perfect competition. And it is not a question of

43310 saying one is better than the other. It is not a question of the degree of competition.

Q. You have to know the kind of competition as well as the degree, don't you, before you can say whether or not it is better or worse than anything else?

A. The question of better and worse does not even enter into this—

Q. You used the expression.

A. —because the one form of competition that is appropriate to one type of situation will naturally emerge from one type of situation—I do not mean to evaluate, but naturally emerge from one type of situation. Another kind of competition will naturally emerge from another type of situation.

Now, to say that the competition which naturally emerges between wheat farmers is better than the competition which naturally emerges between automobile manufacturers it seems to me is rather pointless.

Q. Comparing unlike things, so to speak.

A. Yes. One would have to compare the kind of competition that might—that perhaps does exist, say, between automobile manufacturers and another kind of competition that might exist in view of the nature of the industry among automobile manufacturers.

Q. As a matter of fact, isn't the concept of perfect monopoly just as theoretical as the concept of perfect competition?

A. They are both theoretical. I think you would
43311 get some instances of closer approximation in the actual world of perfect monopoly; for example, the United States Post Office, or the tobacco monopoly.

Q. Even there it is not perfect, is it?

A. Yes—well, very close, very close to it. You can go into it on the philosophical consideration that every product in the world is in competition with every other product.

Q. There are substitutes, for instance.

A. Well, I suppose you could say a pair of shoes is a substitute for a box of cigars—substitute in the sense that if a man spent his money for the one he can't spend the same dollars for the other.

Q. But even perfect monopoly in the one commodity may have competition of a substitute commodity—

A. In that sense, if you wish—

Q. —furnishing the same uses, similar uses.

A. It may have, but not necessarily furnishing the same uses. They are substitutes in the sense that I have used the word; that is, that consumers may decide how to use their purchasing power,—to buy cigars or shoes.

Q. Well, all I mean is the concept of perfect monopoly is also theoretical.

A. It is, but I believe there are closer approximations to perfect monopoly than to perfect competition.

Q. And I take it that perfect monopoly is theo-
43312 retically the highest expression of impefrect competition?

A. Well, I do not know that one could say that, unless

you are centering your attention upon one of the things that might create imperfection in competition.

Q. And what one thing would that be?

A. That is a degree of collusion or agreement which would create imperfect competition, but that is only one of a great many, and one that economists usually have in mind when they talk about imperfect competition.

Q. Well, for anyone to say that an industry is characterized by imperfect competition, what does that mean to you as an economist?

A. It means that that industry does not have the characteristics which permit of the operation of competition in the same manner that it would operate under the assumed conditions of perfect competition.

Q. To say that is simply to say no more than something that applies to all industries, isn't it?

A. Yes.

Q. So an industry is characterized by imperfect competition is saying what could be said about all industries?

A. With the exception of perfect monopolies.

43314 Q. Now, on page 42955, lines 5 and 6, didn't you say it was one of the assumptions of perfect competition that price approaches the cost of competition plus a norinal rate of return (showing the record to the witness)?

A. Apparently I did.

Q. Now, I am asking you whether or not the theory of perfect competition assumes that a normal rate of return for all competitors—or just what it does mean.

A. Perfect competition there would have a tendency—on leaving aside differences of abilities of different producers—toward a normal rate of return.

Q. Meaning by that the same rate of return?

43315 A. Let us see. Let me think a minute.

(Pause.)

A. Yes, the tendency towards the same rate of return.

Q. In other words, you mean to say that the theory of perfect competition assumes the same rate of return, then, for each competitor?

A. That there would be a tendency, leaving aside the possibility that one competitor may have greater ability than the other, of course, the assumption of perfect competition would imply that equal ability among competitors.

Q. And assuming they also have the same costs?

A. Their costs would tend toward uniformity.

Q. And you would expect perfect competition, then, to result in each competitor in the industry making the same rate of return?

A. There would be such a tendency under perfect competition.

Q. How much of a tendency?

A. Depending upon the degree of perfection. If you assume the abstract conditions of perfect competition, then it would come to that.

Q. Well, under conditions of imperfect competition would you expect a price to approach the cost of production plus a normal rate of return?

A. Not nearly so clearly, because one of the conditions of imperfect competition is the differentiation of—
43316 one of the things that might give rise to imperfect competition is differentiation of the product, and one may get a higher return—

Q. If you find substantial differences in the rate of return of different concerns in an industry, different competitors in an industry, what inference would you draw from it as to the existence of competition or lack of competition?

A. Oh—as to the existence of competition—

Q. Yes.

A. —or lack of competition.

The previous answer was referring to imperfect competition as contrasted with perfect competition.

Q. All right.

A. The distinction between perfect competition and imperfect competition has nothing to do with the existence or non-existence of competition.

Q. What inference would you draw, as an economist, as to the nature or degree of imperfection if you ascertained that there was a substantial variation in the returns to different members, different competitors in the industry?

A. I suppose that would indicate that we are dealing with a situation of imperfect competition.

Q. The fact that there was a substantial difference in the return?

A. Yes. That might be that the timeless adjustment that I mentioned as one of the characteristics of
43317 perfect competition was not present and that the industry was—that factors of production were in the process of flowing to the more profitable places and had not completed their process.

Q. Would the difference in the net return to various competitors in an industry tell you, as an economist, or indicate to you as an economist, whether or not there was collusion among them?

A. Oh, no.

Q. Would you say that a showing of high returns in an industry would indicate to you as an economist that there was collusion?

A. No.

Q. Would you say that low returns in an indus-
43318 try, or no returns in an industry, would indicate to you as an economist that there was or was not collusion?

A. Now, on that I think one can draw some inferences if you permit some other assumptions.

You might have a situation in which even a monopolist—

Q. Can you answer it first and then make any assumptions you want in explanation?

A. One might have a situation in which an absolute monopoly would be unable to get a satisfactory rate of return.

The Witness: I can't quite make sure until I hear the question again. I am sorry. My mind wandered.

(The record was read.)

A. (Continuing.) For example, if the monopoly was dealing in a product which had a highly elastic demand, then it might be that it would be impossible to im-
43319 prove the rate of return by raising the price.

By Mr. Wooden:

Q. You said inelastic?

A. No. An elastic demand.

If, on the other hand, a monopolist is dealing in a product—or, if, on the other hand, we are dealing with a product of inelastic demand, then I think that some inference—not proof, but some inference—can be drawn of the absence of monopoly from a low or unprofitable rate of return, because a monopolist dealing with a product of inelastic demand presumably could advance the price to a point where he would be receiving a profit.

Q. Notwithstanding the almost total collapse of demand?

A. If the demand for the product were completely inelastic, then I think he would be able to show a profit. Of course, I am taking extreme assumptions.

Q. Isn't it possible in your view as an economist for collusive arrangements to exist and yet the industry show low returns?

A. Yes, if you were dealing with a product of highly elastic demand, and by the same line of reasoning that I applied to a monopolist before, that might be true.

Q. It would not be true in your inelastic demand?

43320 Q. Wouldn't it—

A. Well, it depends on the degree—

Trial Examiner Norwood: Let him finish.

A. (Continuing.) —of your collusion. If your collusion virtually amounts to monopoly, I come to the same collusion. If your demand is an inelastic demand, then one would normally expect a rate of return favorable to those who were in collusion.

Q. Wouldn't inelasticity of demand of itself make even the efforts of a collusive combination to show a good rate of return, in effect?

A. Inelastic demand would be favorable to any group of people who were acting in collusion; yes.

Q. Well, my question was whether it would not tend to keep down their rates of return to a low figure.

A. Inelastic demand?

Q. Yes.

A. No. All we have been saying is the opposite. Inelastic demand means that any group of people who can determine what the price will be can push that price

43321 up without killing off the demand. That is what we mean by inelastic demand.

Q. Well, what would you say as to an industry where the production has remained for several years below 50 percent of capacity because of inelastic demand? Wouldn't that tend to keep the rate of return down?

A. You are assuming cause and effect.

Q. Well, I am assuming that, of course, but I am asking you what would be the effect? Wouldn't it tend to keep the returns down?

A. You are talking about some hypothetical industry which does not have elastic demand.

Q. Inelastic, because production has remained below 50 percent of capacity for several years.

A. I do not follow that reasoning. I am afraid I can't answer the question.

Q. Don't you agree that an industry with high capital

costs and an inelastic demand and a low rate of operation would tend to keep earnings down—returns down?

A. High capital costs? What was the second?

Q. Inelastic demand.

A. And high capital costs—

Q. And a low rate of operation.

A. And a low rate of operation, that that would tend to keep—

Q. Keep the rate of return down.

A. I don't think we conclude that without know-
43322 ing what the prices have been relative to costs and various other things.

Q. You see nothing in the factors that I have outlined that you as an economist are willing to express an opinion on?

(Mr. Bond hands a pad of paper to the witness.)

A. I do not think one could answer on the basis of those assumptions. I think it is an unsolvable problem.

Q. Wouldn't you expect a low rate of return if under those conditions the consumption and demand dropped off to, say, 25 percent of the productive capacity?

A. Well, I would expect that with the—no, I can't—I don't think you can.

Q. Wouldn't you expect that even in the case of a perfect monopoly? As production got down to an extremely low figure, with high capital costs and an inelastic demand, wouldn't it be natural for it to show a low rate of return?

A. I think the difficulty here is the low rate of return usually results from these other things. Putting it in as an assumption of the problem makes it an unsolvable thing.

Q. You say the low rate of return results from these other things. That is my question. Wouldn't you expect a low rate of return under those conditions? Haven't you answered it when you say usually the low rate of return results from those things? Hasn't that answered it to your satisfaction?

A. Did I say that usually a low rate of return resulted from these three conditions that you have mentioned?

43323 Q. That is what I understood you to say.

A. May I have the place where I said it?

(The record was read as follows:

"I think the difficulty here is the low rate of return usually results from these other things. Putting it in as

an assumption of the problem makes it an unsolvable thing.")

The Witness: Low rate of production. That is one of the three assumptions—low rate of production.

By Mr. Wooden:

Q. You said it was unsolvable, and yet I understood you to answer. Do you think it is still unsolvable when you say that is usually the result?

Mr. Bond: He did not say that.

A. I don't think I said that.

By Mr. Wooden:

Q. The low rate of return usually resulted—

Mr. Leisure: He has already said he did not say that.

Mr. Wooden: The record will show.

The Witness: Just off the record. I want a minute to think.

Trial Examiner Norwood: Off the record.

(Pause.)

By Mr. Wooden:

Q. Can't you answer that question directly without making a long series of calculations on paper?

Mr. Bond: May we have the question read?

Trial Examiner Norwood: Read it.

(Question read as follows:

"Q. You said it was unsolvable, and yet I understood you to answer. Do you think it is still unsolvable when you say that is usually the result?")

Mr. Leisure: Is that a question or an argument? I submit we ought to have a question.

Trial Examiner Norwood: I think it is a question. Let him answer it.

The Witness: I am ready.

A. No, I do not think I could answer the question in that way.

If the supply for a product on the market does go down, assuming large capital investments, assuming low rate of production, ordinarily that is a product of inelastic demand. When the supply declines, the price would rise. And I do not see, therefore, why you necessarily come to the conclusion of low rate of return.

By Mr. Wooden:

Q. You think the price would rise when the demand decreases?

A. One cannot answer that without knowing what other things happened at the same time?

Q. In other words, you could not answer that
43325 unless you knew whether or not some artificial factors were at work?

A. No, I did not mean that. I mean that one could not answer it without knowing something about the relation of cost to price as existing, for example.

Q. Under the economic theory of the relation of competition would you expect prices to rise as demand fell off?

A. Well, knowing—if that were all that were involved, one could not answer the question without knowing other factors. Price is the relationship—has its relationship in the principles of supply and demand. The demand is related to the supply, and the supply in turn is related to cost. So one could not answer it without knowing just how one of these variables moved and what would happen to another variable.

Q. Well, doesn't the so-called law of supply and demand ignore other factors and simply say that as price increases the demand tends to decrease, and vice versa?

A. As price decreases demand tends to increase?

Q. Yes.

A. And vice versa, other things being equal.

Q. In other words, that is the law of supply and demand, other things being equal.

A. It does not have to do that.

Q. Tends to do that.

A. Other things must always be considered, however.

The other things that must be considered are cer-
43326 tainly supply as well as price; and back of supply, as I said, stands cost, which is related to it. So you have the principle of supply and demand always dealing with this relationship between at least these three factors of supply and demand.

Q. And no others?

A. No, I would not say no others, because back of supply is recognized to be cost.

Q. Then you bring in another factor, nevertheless.

A. I think it is brought in in the principle of supply and demand, yes.

Q. But the price would not fluctuate according to supply and demand normally without regard to cost, would it? Isn't that the thing generally in the depression?

A. I beg your pardon?

Q. Isn't that the thing that accompanied the depression? A lot of people lost—even though they could not make their costs, price fluctuated regardless of their cost, didn't it?

A. Well, now which question am I answering?

Q. Answer all or any of them.

A. I would rather not just talk about a number of questions.

Q. Well, isn't it a fact that during the depression the price in many commodities fluctuated and went down radically regardless of the cost?

A. Oh, yes, temporarily.

Q. Wasn't it the law of supply and demand that
43327 forced it down?

A. The law of supply and demand does a number of very peculiar things.

Q. And that is, you think, a peculiar thing, for supply and demand to force prices down?

A. No, I wouldn't think that particular one is peculiar, but I mean that—there is no one very simple expression of the law of supply and demand, for one thing, and there certainly is no one pattern in which it always operates.

Q. Wouldn't you say, as an economist, that assuming the existence of collusion among competitors, that nevertheless the forces of supply and demand might be so strong that it would show a low rate of return among those competitors?

A. Yes, depending upon—the likelihood of this happening depends on the degree of elasticity of supply and demand.

Q. Would there ever have been a more favorable period for that result to show itself, so far as you know as an economist, than during the depression years, say, from 1931 to 1933?

A. You mean for a declining demand to cause a depression in prices?

Q. To cause low returns.

A. Well, whether that will cause low returns—now, you spoke a moment ago of the price. When you speak of returns you have to go into costs to determine what the returns are. When one is dealing with returns he
43328 has to consider costs, and the way the costs will lead business men to affect the supplies of their

producers, and a declining demand does not necessarily mean a continual decline in price, because producers could just refuse to produce at the prices which are coming into existence, you see.

Q. And would that tend to make a lower return?

A. In the case of capitalistic industries, it would tend—that would mean less than full ultization of a plant—but still not as low a return as might be obtained by continuing production.

Q. Well, my question is, assuming the existence of collusion and combination among competitors, can you cite any similar period where the forces of supply and demand tended to force a low rate of return upon them, notwithstanding their collusion, as during the years 1931 to 1933, inclusive?

A. Well, I couldn't answer that as I am not an economic historian to a sufficient extent.

Q. Wouldn't you say as an economist that that period was one that made it difficult for any kind of monopolistic control or collusive control to show a good rate of return during that period?

A. That is true, but that would not necessarily preclude the possibility of monopoly making a return, although that is the case—I do not want to appear as a factual witness here and have to substantiate particular instances—
43329 I believe it is the case that a number of industries commonly thought of as having very decidedly monopolistic elements did show profits during that period.

Q. You mean all members of the industry, or certain members?

A. Certain members, and in some cases perhaps very few of them only.

Q. Would you be surprised if certain members of the cement industry showed any profit during those years?

A. Showed any profit?

Q. Yes, any profit.

A. No, that would not surprise me.

Q. You will agree, will you not, as an economist, that the period of the depression since 1931 was a severe test upon the ability of any industry, whether collusive or not, to show a good rate of return?

A. The question amounts to this, that the depression is not a most favorable time for making profits. Yes, of course that is true.

Q. Now, you said that the theory of perfect competition assumes a price approaching the cost of production plus a normal rate of return. Does imperfect competition assume a normal rate of return?

Mr. Bond: The same question has already been asked.

Trial Examiner Norwood: He may ask it again.

Answer the question.

43330 A. Why, your condition—I think to really express—

Let us have the question.

Trial Examiner Norwood: Read it.

(Question read.)

A. Yes. You are not so likely to find it completely realized, but there is nevertheless that same tendency in a condition of imperfect competition.

By Mr. Wooden:

Q. Does a collusive arrangement assume a normal rate of return?

A. No one could say as to that. That would depend on the purpose of the collusion and the strategic bargaining powers of the different members involved in the collusion, and so on.

Q. Would you say, as an economist, that collusive arrangements are entered into for the purpose of protecting a normal rate of return?

A. I presume collusive arrangements would be entered into for the purpose of getting as high a return as you could get, I suppose. That is, the collusive arrangements we are talking about would be entered into for the purpose of making—affecting price—

Q. Oh, yes.

A. There are many other forms of collusive arrangements.

Q. In other words, they want to get as high a return as they can.

43331 A. Naturally.

Q. Would you say more than normal or just normal?

A. Well, if one assumes that we have what economists sometimes call an economic man, who is always motivated by the desire for economic return, then I suppose that would be true. But actually we know business men are human beings. They have a number of considerations that influence their decisions, such as the effect of their actions

on the good will of their fellows and upon public opinion, perhaps certain other ideas that they may have in their mind. So we can't be quite so sure as to precisely what business men would do in a particular situation.

Q. What is your definition, as an economist, of a normal rate of return in a competitive industry?

A. That is very difficult. A normal rate of return, I should say, is a return that, in view of the risks of the industry, makes investment of capital in one industry equally attractive with other industries.

Q. Would you say that if outside capital found it attractive to enter the cement industry, increase the productive capacity, so that there is overcapacity, that that would have any indication as to the rate of return in the industry?

A. No. That would depend upon a number of things, as to where this outside capital did flow into the industry,
and under what circumstances, and so on. It might
43332 be true that the normal rate of return in the industry was not satisfactory, and still here is some entrepreneur who believes that by establishing a plant at some point where a plant does not exist that he could make a good rate of return.

Q. But, of course, mistakes may be made of that sort.

A. I would not regard that as a mistake. I would regard that as good business judgment. And if the question is raised why didn't the others move their plants, as is assumed under perfect competition, the answer is you are dealing with fixed plants. You can't pick a cement plant
up and move it over to another place.
43333 Q. In your opinion, Dr. Griffin, has competition in American industry, factory industry, tended to become more perfect or more imperfect since 1900?

A. Well, again we are talking about these degrees of perfect and imperfect.

Competition from time to time, from one economic period in the country to another, takes different forms, growing out of the basic characteristics of industries.

You have different forms of competition, for example,
between the shoe factories of the United States
43334 today, I assume, than one had between the thousands of local cobblers who existed before the time of the shoe factories.

Now, you ask me whether there is a change of degree of competition. I can't answer that.

Q. No, I did not ask you about the degree. I asked you whether in your opinion competition had tended to become more perfect or more imperfect.

A. Well, that is asking about degrees—more perfect, more imperfect.

Q. In your opinion as an economist, based on the assumptions you made in answering hypothetical questions, has competition in the cement industry tended to become more perfect or more imperfect over the period of years that you considered?

A. I can't see any basis for my saying that has become more perfect or more imperfect. I have characterized the industry as described to me as obviously a case of imperfect competition.

Q. Would you say that the—

A. And that would be true—I also said, I think, at various points in my testimony, regardless of the methods of marketing which might be used in that industry. There have been since this period of 1900 changes, developments of the methods of marketing. I do not see how that would affect the question whether the industry has imperfect competition or not, or the degree of imperfection of competition.

Q. Now, you used the expression "imperfect com-
43335 petition," and you said that the cement industry is one characterized by imperfect competition. Is that right?

A. Yes, sir.

Q. You have reviewed to some extent the development of the industry in your assumptions, haven't you?

A. Yes.

Q. Do you mean to say that the industry under those assumptions, and considering its development, has tended to become an industry of more perfect competition or less perfect competition?

A. I answered that question a moment ago. I said I did not think that one could draw the conclusion of more perfect or more imperfect competition.

Q. You think it is impossible to ascertain the difference in degree of perfection or imperfection?

A. Now we are going over the same question. As an economist uses the term, he does not think of perfect competition and imperfect competition, and then goes on over to monoply in the case of degrees. They are different kinds of things.

Q. No gradual shading off from one to the other?

A. Well, I suppose that is true, but I have also said that there are so many different factors that tend to make an industry an industry of imperfect competition that it is impossible, I think, to bear every one of them in mind and determine whether in toto you have a condition that
43336 is more nearly approaching a condition of perfect competition than another.

Trial Examiner Norwood: Do you have an opinion about that?

The Witness: No.

By Mr. Wooden:

Q. You agree that collusion is itself a sample of imperfect competition?

A. Sample of imperfect competition? No, sir.

Q. A form of imperfect competition?

A. No. It is a contributing factor to imperfect competition. It is one of the things which would be included under the concept of imperfect competition, yes.

Q. Do you say that it is impracticable or impossible for an economist to determine the point at which imperfect competition shades one into collusive competition?

A. Again if is not a question of imperfect competition shading off into collusion,—there being a little collusion, and a little more collusion, making one more imperfect than the other.

Q. Isn't that the exact situation in industry, that you have a continual difference between the degree of imperfect competition? It is not the same degree or the same kind in each industry.

A. That is true. That is not the same kind in each industry, being different forms of—different patter,is
43337 of competition worked out in different industries. I think I would defy almost anyone to say that one of these patterns is quite different—is more perfect competition or more nearly perfect competition than another. You have one kind of competition existing, let us say, in the furniture industry, and you have another kind of competition that is existing among wheat farmers. Now—

Q. By the same token you defy anybody to tell whether one degree of imperfect competition is any different from another degree of imperfect competition?

A. I don't think—perhaps some day economists will set up the concept of imperfect competition in such a precise

way that you can statistically measure it on the scale and say, "We are now 18 points off from perfect competition," but logically I can't conceive of their doing it, and I certainly have not done it so far.

43338 Q. Dr. Griffin, I believe you said that as capital costs increased in an industry and there came to be fewer concerns engaged in it that that had a tendency to increase the self-restraints that the members of the industry put on themselves; is that correct?

A. I suppose you mean by capital costs, that is a considerable investment, considerable capital investment?

Q. Yes.

A. Industry that has considerable capital investment for each producer and a large capital investment relative to direct out-of-pocket expenses, it is a relative matter really—well, understanding that, and then the other factor of fewness of concerns would tend to increase this natural self-restraint.

Q. And in that tendency, the tendency would be away from the concept of perfect competition?

A. Yes, that self-restraint of which I am refer-
43339 ring is not a characteristic of perfect competition.

Q. Why, then, are you unwilling to say that there has been a trend in American industry, or tendency since 1900 towards more imperfect competition?

A. Well, partly because there are a great many factors that affect—that make more imperfect competition, and the ones that you have mentioned are two of them.

Q. But they would be in the direction of imperfect competition, wouldn't they, those factors that I have mentioned?

A. Yes, I should think those two, all other things being equal.

Q. Then they would constitute a tendency of themselves, whether or not offset by other factors, toward a more imperfect state of competition, wouldn't they?

A. Assuming the facts to be as you have assumed them there, that there are fewer concerns engaged in American industry today than in 1900, that would be an assumption.

Q. Haven't you written and published articles to the effect that there have been such a trend?

A. I do not recall having done that as to industry in general. In certain industries it would certainly be true.

Q. Are you unable to express an opinion as to whether there has been any such trend in the cement industry?

A. Towards fewer and larger producers?

Q. Towards more imperfect competition.

43340 A. Oh, I said previously that I could not express an opinion as to whether there was more imperfect competition.

Q. Are you unable to express such an opinion?

A. Yes.

43341 Q. Do you think economic opinion, expert economic opinion, is of value in distinguishing between collusion and merely imperfect competition; that is, that falls short of collusion?

A. Well, I think it is perhaps of some value in indicating whether or not an inference can be drawn of collusion.

43345 Q. I know you have not. Are there any factors in the cement industry's practices as outlined to you in Mr. Bond's hypothetical questions from which one could draw an inference of collusive control?

A. Well, I cannot evaluate these factors one at a time. Taking that picture of the industry, I do not think that an economist can draw the inference of collusive control.

Q. Do you think identity of delivered price is no indication whatever of collusive control?

A. That is right.

Q. Even on sealed bids?

A. Under the assumptions as stated in the question, I answered that already.

Q. Well, if you were looking for economic indications of collusive control in the cement industry, what could you as an economist point out as being possible evidences of it?

A. Each mill selling in its own market and refraining from selling in another mill's market; observation, in other words, complete adherence to the uniform f.o.b. plan which has been characterized here as Professor Fetter's plan. I would consider that in the absence of a

43346 Government order to do that, that that was an evidence of collusive control.

Q. Anything else?

A. That is the best example that I can think of at the moment.

Q. You cannot think of anything else that would indicate collusive control except uniform mill base system; is that right?

A. You are asking me to imagine this industry to be

different than I understand it to be, and different from the way in which it is described to me to be. I do not think I can answer the question on that basis.

Q. You have imagined it, haven't you, when you answered that the uniform mill basis would have such and such effects, and would be an example of collusive—draw an inference of collusive control from it?

A. I did in my direct examination accept that as an alternative, that was in answer to a question, accept that as one of the alternatives.

43351 Q. Now, you say that the number of cement plants outlined to you is such that you expect conditions of imperfect competition; is that right?

A. The number of cement plants and the number of owning companies.

Q. Yes.

How many additional plants and companies would there need to be to satisfy your state of perfect competition in cement?

A. Well, of course, it is a natural question, but one that is impossible to answer. We know that when you get a very few plants so that each individual producer will take into account the effect of his decision upon the market, we call that—that is what we are visualizing under imperfect competition. We know that you get over to perhaps 10,000 of them, why, then, you do not think anyone can draw the line between that.

43352 Q. Well, isn't all you mean to say that the fewer the number of competitors in an industry the more of a tendency to imperfect competition there is on that ground alone, and the greater the number in the industry the greater the tendency toward perfect competition?

A. The tendency toward perfect competition or imperfect competition, but it is true that the fewness of sellers in a market is one of the features of imperfect competition; therefore, if there are very few that feature is more pronounced than when there are very many.

Q. If ten it is more pronounced than if twenty, and if a hundred it is more pronounced than 150; is that correct?

A. Well, all other things being equal, but you must bear this in mind, that is the psychology of producers in different lines will vary, so that you might have a situation in which with twenty, those twenty were more aware of their effects upon the market than ten in another situation.

but waiving that I would agree with your general proposition.

Q. Now, assuming that there are eighteen or twenty cement mills under different ownership in the Lehigh Valley, the mills being right close together, would you say that number is too small to expect anything approaching perfect competition?

A. Eighteen or twenty under different ownership, you say?

Q. Yes.

A. Yes, I would think that would be too small to
43353 approach perfect competition.

Q. You will agree that it would tend to represent more imperfect competition than that ultimate, than if there were thirty in the same area?

Q. If you can say that eighty or ninety companies and 150 or 200 mills in the cement industry are not enough to expect perfect competition, why can't you say how many would be enough?

A. Well, I cannot. I do not know how I can give you a better answer than I have before, that the situation of perfect competition is such a very large number, I suppose one might say—I think you would be using words strictly speaking infinitely large numbers of producers, such a large number that no one of them has any measurable effect on the market; that is your situation of perfect competition. Now, on the other hand you have fewness of producers which creates a situation of imperfect competition. You ask me where between ten and infinity the line is drawn. I cannot answer that.

Q. Wouldn't you say that the smaller the number of competitive concerns in an industry the more easy it would be for them to act collusively?

Trial Examiner Norwood: He said that would be the case, all other things being equal.

Mr. Wooden: Yes, that is what I mean.

43354 A. The question is whether fewness of business men makes it easier for them to act collusively.

By Mr. Wooden:

Q. Yes.

A. Oh, generally speaking, yes, but you had some examples of very few producers where apparently it is difficult for them to act collusively. Generally speaking, that would be true.

Q. Now, I understood you to say, Doctor, that it was of no logical significance whether there is price competition or merely difference in the bundle of things and services offered; is that correct?

A. No, that would not be an accurate statement of what I was saying. I said that, I believe, that there was no logical difference, no economical significant difference between competition in general and price competition.

Q. You do not think that price competition is of any more importance economically than other forms of competition?

A. Well, as I said, you are asking me now to say whether one is more than the other when I have just finished saying I think they are virtually the same thing.

Q. Then you mean to say that price competition is no more important in your opinion as an economist than other kinds of competition; is that right?

43355 A. I have said there is no difference between "A" and "B", and now you ask me whether "A" is greater than "B."

Q. I did not say greater. I said "A" is more important.

A. All right, more important. I just finished saying in my opinion there is no essential difference between the two.

Q. No essential difference in competition?

A. No essential difference in kind, what they are; naturally you cannot contract them in degree of importance if there is no difference in the things. They are the same thing. Competition is broader. Competition, as the phrase is used alone, is the broader term.

Q. Of course, we all know that, but do you mean to say that price competition and the broader term "competition" are identical in meaning?

A. I said at one place, I believe, I have no objection to people using the term "price competition" if they meant to center attention upon the price side of the equation.

Q. Well, just answer—

A. Aside from that usefulness for bringing out that particular thing, I think there is no distinction between price competition and any other kind of competition. Competition is the rivalry of the sellers for the patronage of a given group of buyers. That rivalry takes the form of an

effort on the part of the seller to offer as attractive
43356 bargains, so to speak, as they can, and that they may be by increasing the number of services or it may be that they may have regard to the number of services and the quality of them, or to what the consumer pays for them, and it seems to me there is no significant difference between them.

Q. Do you think other forms of competition are just as significant and just as important to the public as price competition?

A. Are you following my definition of "competition"?

Q. You say you have no objection to the term "price competition" directed to that certain concept of part of competition.

A. Now, you are using it in that narrower sense in which the business man in common might use it of centering attention upon the fluctuation of dollars and cents rather than fluctuation in what is given?

Q. Yes; I mean that, I mean dollars and cents. Do you think competition in dollars and cents is of no more significance or importance to the public than any other form of competition?

A. I do no think one could answer that question generally and logically there is no difference.

Q. Well, I understand you to say, though—correct me if I am wrong—that competition in respects other than price is just as significant and just as important as price competition; is that right?

43357 A. My answer is that I think, as given before, that there is no logical difference between that, between varying the number of cents that is paid for the bundle of goods or services, and varying the amount of goods and services that are being delivered.

43358 The Witness: I believe there is only one kind of competition, that is the rivalry of the sellers in attempting to give a more attractive bargain to the buyer. Now, whether that more attractive bargain is made in terms of knocking off a cent from the price or adding something to the service is of no importance.

43361 Q. Didn't you attach some special significance and importance to the price competition existing in the cement industry between 1931 up to 1932, say, when you answered the hypothetical question about price increases made during 1932?

A. When I answered the hypothetical question?

Q. Yes.

A. About price increases?

Mr. Bond: What question?

Q. The question about increases of 40 or 50 cents a barrel in the summer of 1932, after a period of progressive price reductions, that was part of the question.

Now, I am asking you whether you attach any
43362 special significance or importance to that part of the question?

A. As I recall it, I said in answer to that question that it seemed to me it could be explained by the self-interest of the individual business man. Now, as to did I attach any significance to the fact that the prices did advance—

Q. And after a period of decline.

A. I took that into account, that was part of the picture that I was being asked to explain.

Q. And yet you say it was of no more importance or significance than other forms of competition during the same period?

A. As I recall it, I was being asked to explain the significance of the price changes, as to whether they—I have forgotten just what the question was, whether they justified an inference of collusion or something of that kind. The attention was centered upon that particular thing, so naturally I was considering the particular thing.

Q. Well, economically, wouldn't you consider that price competition under those circumstances during that period was a significant and important thing as distinguished from other forms of competition?

A. You are using the term in the narrow sense and asking me whether in view of those changing prices it is—

43363 Trial Examiner Norwood: Is there any difference in understanding of price competition?

Mr. Bond: Oh, yes.

Trial Examiner Norwood: Particularly speaking.

Mr. Bond: Oh, yes, decidedly.

The Witness: Yes.

Trial Examiner Norwood: In other words, the witness refers to price competition as any competition that can be reflected in difference in—

The Witness: Anything affecting the value of the—of what is being given, or the price that is asked for it.

Mr. Bond: Anything that makes the offering more attractive. Mr. Wooden is using it in the sense—

Trial Examiner Norwood: Now, having explained that you can answer the question from that standpoint.

Mr. Bond: From the witness' own standpoint?

Trial Examiner Norwood: Yes, answer it from your own standpoint.

43364 Now, read the question.

Mr. Wooden: Your Honor, the witness has agreed that the narrow sense of using "price competition" is the one that is understandable, and I have been asking from that standpoint.

Trial Examiner Norwood: Well, you may, when you explain that.

Mr. Wooden: It is a common expression in everyday use.

Trial Examiner Norwood: Read the question.

(Question read as follows:

"Q. Well, economically, wouldn't you consider that price competition under those circumstances during that period was a significant and important thing as distinguished from other forms of competition?")

Trial Examiner Norwood: Now, in making that answer will you kindly concern the narrow view of—the narrow definition of price competition meaning what is charged for an article and what the purchaser pays for it in money.

The Witness: Well, you are posing a situation in which —that side of this equation, goods on the one side, goods and services on the one side and price on the other side, a situation in which the price is moving apparently due to competitive forces. Now, you are asking me whether

43365 under those circumstances the price competition is not significant. The answer, it seems to me, is clearly yes, it is.

By Mr. Wooden:

Q. Do I understand you to say that you cannot logically separate price competition from competition in quantity or quality of services?

A. Yes, that is what I mean.

Q. Suppose you had several gasoline stations, which you use as an illustration, all in competition with each other, general competition, and they gave different services, some of them gave, say, windshield wiping, and others did not; some of them checked tires free and other did not,

and so on; but they had the same price, so many cents per gallon for given grades of gasoline.

Now, you say there is no logical difference between the fact that they have the same price in cents per gallon and the fact that they give some different services.

A. Isn't that clear, Mr. Wooden, that under those circumstances they do not have the same price because you have said that they are offering different things for 18 cents. One of them is offering more for 18 cents and the other one is offering less.

Q. Well, I want your opinion.

A. That brings out the very point I am emphasizing.

Q. As an economist.

43366 A. That that difference in the offering is equally significant whether it is arrived at by varying the amount that you put into the offering or the amount that is asked.

Q. Assume that the gasoline stations had an agreement or understanding that price should be 18 cents per gallon, and the agreement said nothing at all about different forms of services, and in fact they gave different forms of services, but all maintained the 18 cents agreed price, then you still say that you cannot logically separate that 18-cent price from the different forms of services?

A. I think I would say yes, because for the same reason, don't you see, that you are assuming that these people are offering different things for 18 cents.

Q. In other words, you claim that there is price competition there?

A. I claim that there is competition, and that there is no essential difference between the two.

Q. Do you claim that there is price competition in such a situation?

A. I simply repeat my previous answer.

Trial Examiner Norwood: Well, is that price competition or is it not? Does your previous definition of price competition, is it sufficiently broad to include?

The Witness: Yes, my definition of price competition is sufficiently broad to include that.

43368 By Mr. Wooden:

Q. Won't you agree that in that event, in that case that there was some restraint placed upon price competition even though you said some price competition existed in the form of services?

A. Well, I suppose there would be some restraint placed upon competition whenever there was any agreement, either that we will close our doors at the same time, as for example with department stores, or that we will pack our goods in such way so that we will deliver or not deliver, or anything that involves agreements involves restraint upon competition.

Q. Don't you know as an economist who has studied the marketing methods of industry, who has taught that, that traditionally competitors seek to aim, when they do have an agreement, that they seek to aim at a price agreement, and frequently let some of the service propositions out of the picture?

A. I think your statement, strictly speaking, that they
43369 frequently do, would be correct.

Q. Do you think that as long as some form of service competition remains, then there is still price competition?

A. Then there is still competition.

Q. You would not say there is still price competition?

A. In the general sense in which I have used the word there is price competition.

43371 Q. Well, wouldn't there be potential price competition so long as new forms of service could be discovered?

A. As long as the individuals operating are acting independently and are in fact vieing for the patronage of a given group of buyers, then I should say that there
43372 was price—that in the broader sense of the term it is price competition, but it does seem to me foolish to apply the term "price competition" in a situation where you are not looking at price as the variable. As I said, I have no objection to anyone using the term "price competition" if you are centering the attention upon the variation in price, using it for that restricted purpose, but to call this other price competition—

Q. Well, wouldn't it be equally foolish to talk about service competition when you are trying to center your attention on price competition?

A. I think so, yes, because the two are the same thing, unless you are trying to center your attention upon one particular element that varies, the essential thing is the ratio between what is offered and what is asked.

Q. Well, do you think it is foolish to center one's attention upon that one thing, price competition?

A. No.

Q. Involving a monetary sum?

A. No, no, I would not say it was foolish to center your attention upon any of those things. I mean, I apologize now for using the word "foolish." It seems to me it is fruitless to use the word "price" competition to apply to this general competition merely because I have said that logically I see no essential difference between that and price competition.

43373 Q. Now, assume that several competitors have an agreement on the price, and no agreement as to their services, and they in fact do give different services but maintain the price fixed in their agreement. Suppose also that they extend their agreement to include certain of these forms of service competition so that they shall all be on the same footing with regard to that. Then, they go along and they find some other forms of service competition cropping out, and they extend their agreement
43374 to include those, wouldn't you say under those conditions that there is a progressive destruction of price competition?

A. Progressive in the sense that you start from—that it progresses all the way along the line, no, I don't think so.

Q. Increasing, then, instead of progressive,—an increasing destruction of price competition.

A. You have certain—when you got to the extreme you certainly would have a limitation upon price competition which you did not have when you started.

Q. A greater one, and a greater restraint, you mean?

A. Yes, but I do not think that you can think of it as that every step that you take along there makes progressive loss of competition possible. In fact, by limiting some of the things you may make competition in some of the others even keener. Do you see?

Q. In other words, do you mean to say that by limiting some forms of price competition and particularly limiting price competition as to dollars and cents on the commodity, that that tends to increase the total amount of competition?

A. Well, one could not generalize. I could imagine situations in which that might be true.

43375 Q. Now, you testified, Doctor, from your point of view there would be competition whether a seller changed his price or not so long as he was free to change it and asserted his right to change it at will; is that correct?

A. I have forgotten whether those were the only conditions that I put in.

Q. Well, isn't that correct?

A. Yes, sir; I would say that the fact of making the change in price is not a necessary test of the competition, that as long as he is free to do so and is vieing with others of his own group for the patronage of a group of buyers, then the fact that the situation may be in equilibrium in that, no one is making a change, is no indication that competition is not existing at that time.

43377 Q. Dr. Griffin, on page 42865, line 10, you testified that competition and price competition exist when any seller has to take into account the action or probably reactions of his competitors. That is what you intended to say, was it?

A. Using the term "price competition,"—the distinction of competition and price competition as I have defined it?

Q. Then, as long as there are more than one competitor would you say there is price competition?

43378 A. Well, that is narrowing down conditions considerably. There are more than one who are actively vieing for the patronage of the group of buyers by attempting to make as attractive an offer as any other seller is making, or more attractive offers, and I would say it was competition in the broad sense of the term,—and price competition.

Q. And so long as any seller has to consider the fact that there is another seller then there is price competition?

A. And the fact that this other seller is independent and free to make any other offer.

Q. So, then, there would be price competition up to the point where there was only one seller, would you say?

A. Oh, I suppose you could push it to that limit. The test, I think, is the freedom of any individual to make prices or make his offering in any way,—arbitrary way that was just suitable to himself. If he is not free to do that, but

has to adapt his offering to the price of other sellers, then he is in competition.

Q. And then there would be price competition under that definition so long as there was more than one seller even though they had an agreement on price?

A. Oh, now you are ruling out the essential—one of the essential conditions.

Q. On the monetary sum agreed upon for the commodity there would still be price competition as long as
43379 there would be more than one seller; is that right?

A. Well, it is conceivable, if you wish to push it to that logical limit, that even though there were agreement, or Government order, that the price should be the same, that there still might be rivalry between the sellers in what they were trying to offer for the given number of cents.

Q. You said there would be price competition under those circumstances?

A. Under the circumstances I have just described; yes.

Q. Even though Government order required adherence to the same price?

A. Unless the Government order has been that you had to require—that you had to offer the same price for exactly the same goods. Of course, in that event there would be no room left for this rivalry to which I have been referring; the same amount of goods and services, all the offering had to be identical, and, of course, our definition rules out the rivalry.

43382 The Witness: If you want to leave out the previous part of the question and answer it in these terms, "Can you tell just from the mere fact of identity of price whether you have collusion or competition," no, one cannot tell that. One can't tell that generally. There might be situations perhaps where you could, but given an identical product being offered at a certain place by a group of sellers to a group of buyers who are well informed,
43383 the price has got to be identical, and whether that identity was accompanied by collusion or not I do not see how an economist can determine, because he is immediately faced with the fact that it would have to be identical anyway; therefore, you can't draw an inference.

43386 Q. Well, I will put this question to you:

Assume that the manufacturers of cement have long maintained an organization dealing with certain aspects of marketing methods, would you expect them to maintain such an organization in order to increase the severity of competition—price competition among them?

A. I do not know that I would use the term "increase the severity of price competition," but I can imagine that you might have an organization of that kind designed to provide information upon which—on the basis of which competition could take place. I did not say in the case of the exchange that it was designed to increase the severity of competition.

43387 Q. Dr. Griffin, on page 42966 you mentioned the tendency of prices to maintain a reasonably close relationship to cost, at least not above cost, by more than a normal margin of profit as one of the indicia of competition. Do you recall it?

A. Yes, sir.

Q. Whose cost or what cost did you have in mind in making that statement?

A. Well, I do not think—I did not have in mind the very specific test, but simply that the returns generally in an industry were maintaining a reasonably close approximation to cost.

Q. Whose cost?

A. The cost of the various producers in the industry.

Q. In other words, the reasonably close approximation to the low cost producers?

A. No. I strict theory it would be a reasonable
43388 approximation to the high cost producer, the highest cost producer that it was necessary to keep in the business in order to maintain the supply of goods that was demanded.

Q. In other words, the so-called marginal producer?

A. Yes.

Q. Any costs higher than necessary to maintain the marginal producer whose output was necessary to supply the demand,—you would not intend to apply your remarks to that?

A. Higher than the cost of the marginal producer?

Q. Yes.

A. No, I would not. In fact, I do not see quite what

one would have in mind by costs higher than the marginal producer, because the marginal producer is usually the one who has the highest cost.

43390 Q. Do you mean that competition or the existence of competition can be deduced by ascertaining the margin between unit costs and unit prices in a commodity?

A. No, I do not think that any relation of price and cost—that from any relation of price and cost you can ascertain the existence of competition.

43392 Q. I asked you whether a secret price cut would
43393 be an act of competition as distinguished from a condition of price competition.

A. Yes, it would be, but I would not limit it to the secret feature particularly.

Q. How would you distinguish between that act of price competition and a condition of price competition?

A. Well, I think my answer in the direct testimony pointed out that a state of condition of competition exists when sellers have to take into account the actions, probably reactions, of their competitors to offers which they make to buyers, where rivalry exists, and so on. You have the characteristics that I mentioned.

Now, competition may well have come to a state of equilibrium so that no one for the moment, or perhaps for a long period of time, makes any change; but if the different sellers are alert to the possibilities of price change, and stand willing—price change, or change in the amount of service, or change in the quality of the product—and stand ready to adjust their own actions promptly to any such change on the part of a rival, then I say that is a state of competition. It is not necessary that they should all be changing or that any number of them should be changing at any particular moment to establish the fact that they are competitors.

Q. But if one of them made a secre price cut the condition of competition would remain unchanged, while
43394 there would be an act of price competition in that price cut?

A. That would be an act of price competition, yes.

Q. Without changing the condition of price competition.

A. Yes. "Condition of price competition" is the broader term which would include "acts of competition."

Could I have the last question? I am not sure that I answered completely.

Trial Examiner Norwood: I think it is answered.

The Witness: Is it?

Trial Examiner Norwood: I think we will be getting along faster if we boil down our answers, not let them lengthen out into discussion.

By Mr. Wooden:

Q. Dr. Griffin, I understand your testimony to be that price competition has not ceased when different prices, prices that have been different, become identical; is that right?

A. Well, one could not conclude that it had ceased from that assumption.

Q. Would you say that price competition had be-
43395 come more perfect when prices that had been different became identical?

A. One could not conclude about that just from that fact itself. And besides, as I indicated this morning, I don't like "more perfect."

Q. How can you conclude that identical prices, then, indicate perfect competition, or something approaching perfect competition, if you can't answer that last question?

A. I don't think I said that it indicated perfect competition, but that identity of prices would be consistent with perfect competition.

Q. As a matter of fact, it might indicate the opposite?

A. It might indicate monopoly.

Q. Now, in the long hypothetical question Mr. Bond put to you, and in one or two others, he referred to cement as a homogeneous commodity. Did you understand by that that the quality of cement was identical?

A. I think it means substantially that, yes.

Q. And that is what you took it to mean in your answer?

A. Yes, that it is substantially identical.

Q. Would you have made the same answer if the hy-
pothetical question brought out that cement met
43396 certain minimum standard specifications, but that above the minimum standard there was substantial variation in the quality of the product on the part of the different producers?

A. That would become a question of fact, as to whether

any variations in quality that you may now be talking about were sufficiently valued by buyers so that buyers would be willing to pay different prices for them. So I do not think that that assumption, in view, I believe, of another statement to the effect that buyers were not ordinarily willing to pay more for one kind of cement than another at the same delivered point, would be significant.

43399 ("Q. Would your answer be affected if you were to assume that the dealers purchasing cement ordi-
43400 narily do not know that the utility of one brand of cement is greater than another?")

A. Would that affect my answer to the immediately preceding question?

Trial Examiner Norwood: Yes.

A. Obviously they are contradictions. I was assuming they are well informed, and you are now asking me to assume there are significant differences in the product and that the dealers are not aware of that.

By Mr. Wooden:

Q. I am asking you whether it would make any difference in your answer to Mr. Bond's hypothetical question if you were to assume that dealers were not informed that there is a difference between—substantial difference between the utility of the various brands.

A. No, I do not think it would make any difference because the differences can only enter into the market picture if the buyers are aware of them, I suppose. It would, I suppose, change the assumption if the buyers are not well informed of the—

Q. Isn't that one of the conditions from which you concluded prices would be identical, the fact that buyers were well informed?

A. Buyers are well—

43401 Mr. Bond: If Your Honor please, if you read the hypoethetical question you will see there is nothing of that sort.

Trial Examiner Norwood: Well, he can ask him whether he knows it or not.

Answer the question.

Read the question.

(Question read.)

Trial Examiner Norwood: Is that the fact or not?

A. Generally speaking, we say concerning—speaking

of markets generally, a well informed group of buyers is one of the conditions that favor the making or the existence of identical prices—

By Mr. Wooden:

Q. Wouldn't you say—

A. —but that was combined with the assumption of identical products. Now we are getting—we are varying the assumptions in two ways: You are varying the assumption, one, on the ground that the quality of the product is different, and then, second, that the consumers do not know that they are different. If we could do this, if we could vary it, and say that the product is identical, but the consumers are not well informed, that would seem to work against the identity of price; but when you say that the product is not identical, but the consumers do not know it, then it seems to me that leads you right back to
43402 identity of price again as you would have it in the first place. There are a number of logical steps.

Q. Dealers who do not know the utility of cement varies act just as though it did not vary. In other words, they act on the assumption that it does not vary, not knowing that it does, and you get the same result.

A. Yes.

Q. And would you say that they would act differently if they did not know it?

A. Oh, presumably if one seller is offering a product that in the buyer's mind is worth more than the product offered by another seller, then presumably they would come to have different prices.

Q. What would you say if it were assumed that manufacturers of cement were well informed that the utility of various brands differed substantially and did not let their dealer-customers know it? How would that affect your answer to the question?

A. As to whether there would be identity of price? Is that—

Q. Yes.

Mr. Bond: What question? The preceding question?

Trial Examiner Norwood: I think Counsel will clarify. How would it affect his answer to what question?

By Mr. Wooden:

Q. How would it affect your answer to the question that the identity of price among buyers and sellers
43403 who are well informed would tend to be identical?

A. You are saying—

Q. The identity of price would tend to occur.

A. —if there are differences in fact between the products of the different manufacturers, the manufacturers are aware of that fact, but not reveal that fact to the buyers—

Q. Yes.

A. —then what effect would that have upon the identity.

It is a difficult set of assumptions to imagine, but I do not see that it would affect the tendency to identity. The essential thing is the valuation that a group of buyers place upon the product. We rely for identity of price principally upon the assumption that buyers will not pay more—not knowingly pay more for one product than for another.

Q. But wouldn't you conclude that under those conditions that I have just outlined that that would facilitate the identity of price?

A. Well, the opposite of that would be that the buyers did know that the products were different, and I have already answered that by saying that if the buyers knew that the products were different then the prices would have to be different. So I think you have your answer in these two questions.

Q. What would you say as an economist to having identical prices for products that are actually different or known to be different to the seller?

43404 Mr. Bond: Your Honor, I object. The question is not clear to me. What purpose? Directed toward what problem?

Trial Examiner Norwood: I think—

Mr. Wooden: I agree that question is not specific.

Trial Examiner Norwood: Complete your question. Go ahead.

By Mr. Wooden:

Q. Assuming Dr. Griffin, that the products of the different cement manufacturers are substantially different in their utility, that dealer-buyers do not know it, and that the prices nevertheless are identical, what economic theory warrants the conclusion that prices under such conditions tend to be identical under conditions of perfect competition?

A. Well, as we have said before, it is the fact that dealers do not know it.

Q. Do you draw any inference as an economist from the assumed fact that the manufacturers know there is substantial differences in their product and do not inform the dealers of such differences?

43405 A. Not just on that one fact alone I couldn't. I don't know whether the differences were such as would actually be significant to the buyers or not, whether it would induce them to pay a higher price for a product or not, favor one manufacturer or not. There might well be—I know the facts in this industry well enough to know there might well be engineering standards that specify one particular quality of cement so that any slight variations above that minimum would not be of any significance. Because of all of those things I would not be able to generalize.

By Mr. Wooden:

Q. I am asking you to assume that the variations above that minimum standard could be substantial, then what, as an economist, would you say the identity of prices under those circumstances would mean from the standpoint of whether it was competitive?

43412 Washington, D. C.,
Wednesday, September 11, 1940.

43414 DR. CLARE E. GRIFFIN thereupon resumed the stand and testified further as follows:

Trial Examiner Norwood: Proceed.

Cross-Examination (Continued)

By Mr. Wooden:

43418 Q. Now, would the answer made by you on page 42974 to that long hypothetical question have been any different if you were to assume that buyers were unable to get anything except destination prices?

A. I do not think that my answer would have been different had that element been omitted.

Q. You do not think it would have been different?

A. No, sir.

43419 Trial Examiner Norwood: You mean had that assumption been included your answer would not be different?

Mr. Wooden: Yes, that is the meaning of my question. His answer is not quite clear to me.

By Mr. Wooden:

Q. You mean—

A. Perhaps I had better have the question. I understood it was an assumption that was in and whether that assumption was essential.

Q. Putting that assumption in that I suggested, that buyers could only get destination prices even when they wanted them, would that have affected your answer?

A. No.

Q. Would it have affected your answer if it were to appear that the Federal Government and State Governments were unable to get f.o.b. mill prices on request, even of the President of the United States and the Governor of Illinois?

43420 A. No, that would not have affected my answer.

Q. Would it affect your answer if it should appear that such requests were refused at a meeting attended by members of the industry to whom the request was addressed?

43421 A. The answer, as I recall it, to the hypothetical question was, taking that as a general picture, the pattern of an industry, general picture of the marketing method of an industry, I believe that it could have been brought about by natural economic developments.

My answer would not have been changed by the assumption that you are now making.

You are now saying to me that there may—that there might have been a meeting.

Q. Yes.

A. You perhaps intend to imply, although you do not say so, that at that meeting there was some agreement. I never said that it was inconceivable that the development of this plan might have been implemented by agreement. I merely said that it was—that no such inference could be drawn by an economist, and that the development 43422 of the marketing system generally as described here was quite conceivable under a normal economic development.

Q. Well, do I understand you to say that if you were to assume that this request of the Presidency and of the Governor had been considered at a meeting of members of the industry and the request declined, that that would or would not affect your answer?

A. It would not affect my answer, because my answer was to the effect that this is a result which is quite consistent with normal economic development of the industry.

43423 Q. Would your answer have been any different if in addition to the statement on page 42968, that from time to time some manufacturers have on request made sales to customers f.o.b. mill, if you were to assume that the f.o.b. mill sales had been rare and that they were not made freely at any time anybody wanted an f.o.b. mill sale?

A. No, that would not have affected my answer.

Q. Would your answer have been any different if you were to assume that the most prevalent pattern of prices was the lowest combination of price base plus rail freight rather than lowest combination of price base plus actual freight?

Trial Examiner Norwood: Read that, please.

(Question read.)

A. The assumption that the prevalent pattern was price base plus rail freight customarily would not change the nature of my answer.

By Mr. Wooden:

Q. In other words, your answer would not have been changed by changing the assumption to one that it was not the actual freight that was involved but merely the rail freight?

A. Your assumption, it seems to me, is, if I may say so—to me implies this, that generally speaking the
43424 actual freight, the actual transportation rate is not the rail.

Q. I do not mean to imply that, but I am implying that in some cases, not rare—in some cases the actual freight is not the rail freight.

A. But I understood you to say that—this assumption was that generally it was the rail freight rather than the actual freight, which implies that generally the rail freight is not the actual freight. Now, I understand you to say

that occasionally the actual freight was different than the rail freight.

Q. All right. Occasionally. Put that first.

Mr. Bond: If your Honor please, may I point out that in the assumptions on which the Professor answered there is a statement of the various patterns of prices, that the usual one is the actual freight, and then it states other patterns in which the price is not based on freight but are called arbitrary prices, and so forth.

Now, Mr. Wooden says if the question were changed so that you know that sometimes the price is not based on actual freight. Well, that is exactly what was in the original question. Mr. Wooden is implying that he is changing the original question. He is not changing it at all.

Trial Examiner Norwood: Well—

Mr. Wooden: I am talking only about this first 43425 pattern.

Mr. Bond: All three are stated.

Mr. Wooden: If there is any ambiguity about it, I will be glad to correct it.

By Mr. Wooden:

Q. I am referring, Dr. Griffin, to this most prevalent pattern, which is stated on page 42968 of the assumed facts, where it says the most prevalent of these patterns is the lowest combination of some price base plus actual freight from the basing point; Now, confining your attention to this most prevalent pattern, what is your answer to my question?

A. And your question now is what?

Q. Whether your answer to the hypothetical question as a whole that you gave on page 42974 would have been changed if that statement that I quoted to you were changed to the effect that it was not always the lowest combination of some price base plus actual freight from the basing point.

Mr. Bond: Do you see, Your Honor—

Trial Examiner Norwood: Now, I think it is very clear, and I hope the Counsel will not confuse it.

Mr. Bond: I do not want to confuse it.

I withdraw the objection.

Trial Examiner Norwood: Go ahead.

A. I hope this answer is responsive, but I am not sure it is.

I think all I can say is that the—I believe that
43426 the assumption you are making now was made in the hypothetical question, and I was answering on that basis.

Trial Examiner Norwood: Then, you considered the situation where the phantom freight and not the actual freight was included in the price?

The Witness: That is putting words into my mouth, sir.

Mr. Bond: That word is not in the testimony at all.

Trial Examiner Norwood: I think we have used that a great many times here. Your clients have used it.

Mr. Brick: No, if Your Honor please. Mr. Wooden and his associates and Your Honor have used it. I do not recall any witness, other than Dr. Fetter and Dr. Viner, who used that expression.

Trial Examiner Norwood: Doesn't it sound rather familiar to you?

Mr. Brick: Yes, sir. Of course, Your Honor and Mr. Wooden used is repeatedly.

Trial Examiner Norwood: I will explain what I mean by "phantom freight." It is the amount that is included in the price as freight but is not the actual freight paid, and a certain part of it is not freight at all but is called freight.

Did you consider that in your answers to these hypothetical questions?

43427 The Witness: Your Honor, that goes to my whole concept of price, which I discussed at some length, and I do not want to go through it again.

I do not conceive of freight as being a part of price. Price is what is paid for the thing at the point of delivery.

Trial Examiner Norwood: Then, your answer would have been the same?

The Witness: If what?

Trial Examiner Norwood: With that concept of freight.

The Witness: My answer to this long hypothetical question would have been the same with the assumption that Mr. Wooden has been making here, for the reason that that assumption was in the hypothetical answer. Naturally—

Mr. Bond: Hypothetical question.

The Witness: In the hypothetical question.

Trial Examiner Norwood: Then, you assumed origi-

nally that the freight used in arriving at the price was not the actual freight paid?

The Witness: I assumed—that hypothetical question stated that sometimes rail freight was involved and sometimes other kinds of freight.

Trial Examiner Norwood: Well, in any case you did not in considering that question consider that freight
43428 was the actual freight paid, did you, or did you not?

The Witness: I considered that generally it was, yes, as was stated, as Mr. Wooden described the general pattern of it.

Trial Examiner Norwood: Would your answer have been any different if it was assumed that in most cases the freight which was considered as a price factor was not the actual freight paid?

The Witness: Was not the actual freight paid by whom, sir?

Trial Examiner Norwood: By anyone who paid the freight; paid to the railroad, or paid to the carrier.

Mr. Leisure: If Your Honor pleases, in most cases does Your Honor understand that that is the state of the record?

Trial Examiner Norwood: There is some evidence of it, yes.

Mr. Leisure: That in most cases—

Trial Examiner Norwood: I do not consider the record proves it. I am just trying to clarify this hypothetical question so we can get through with it, and go on.

Mr. Porter: Your Honor, you are assuming that most cases involve some freight absorption by competing mills.

Trial Examiner Norwood: Yes. What I want to know is his attitude to that situation.

43429 Mr. Porter: It is not a question of price that is determined by the base mill but the price that the other mills meet, your question goes to; is that correct?

Trial Examiner Norwood: No. I think he understands that.

The Witness: I am sorry, sir. I do not. I am not trying to be obstinate, but—

Trial Examiner Norwood: The price that was made no matter which mill made it.

The Witness: At a certain delivery point?

Trial Examiner Norwood: Yes.

The Witness: Now, what about it?

Trial Examiner Norwood: Assuming that that freight factor in that price was not the actual freight paid but a large part was what has sometimes been referred to as phantom freight.

Mr. Brick: If Your Honor please, I do not like to prolong the discussion on the matter, but the use which Your Honor and Mr. Wooden have made of the term "phantom freight" in the past does not apply to the situation which Your Honor assumes and propounds to the witness.

Trial Examiner Norwood: I recall your objection to that and ask the Counsel to let the witness answer my question.

Mr. Brick: Yes. Your Honor will give that some
13430 consideration?

Trial Examiner Norwood: Yes. Go ahead.

The Witness: As I understand it, what we are talking about is mill "A" sells to a certain market which is perhaps nearer freightwise to mill "B" than it is to mill "A"; that under those circumstances mill "A" might determine the price which it would quote in this market by considering the price which mill "B" would quote at its mill plus freight to that market. Is that correct? Is that what we are talking about?

Trial Examiner Norwood: Now, don't you understand my original question? If you do not, you say so. Do you understand the point that we have been trying to bring out for 15 or 20 minutes?

The Witness: Well, I think the only point that I do understand that you are trying to bring out I have answered definitely.

Trial Examiner Norwood: All right.

By Mr. Wooden:

Q. Dr. Griffin, assume that in substantial amounts mills at basing points deliver cement by other than rail transportation and that the freight on such deliveries is other than the rail freight.

A. Uh-huh.

Q. Assume also that they use the rail freight as
13431 the basis for determining the delivered price. Would that have affected your answer?

A. You are speaking of the base mill—

Q. Yes.
A. —in determining the price?
Q. Base mill right now.
A. And you say in substantial number of cases?
Q. Yes, substantial proportion of the business.
A. You are not saying that would be typical?
Q. Oh, yes. Yes, I am saying that is typical.
A. Typical.
Q. Yes, that is typical.

43432 A. I am in considerable doubts as to what you mean by "substantial." If you mean that that is the most common, that in the majority of cases—

By Mr. Wooden:

Q. No, I do not mean that.
A. Well, with the explanations I have had, then, as to what the term—as to how the term is used, I would say it would not affect the answer.

Trial Examiner Norwood: Don't you understand what he meant by "substantial number of cases"?

The Witness: I wanted to be—

Trial Examiner Norwood: Substantial portion of all the charges—

The Witness: Yes, but, Your Honor, in answer to my other questions I asked whether it was typical, and that was answered in the affirmative, and I would understand as typical one that embraced probably most of the business and that anything other than typical would be the exception. Now, I was trying to get at his precise meaning of the word "substantial." But understanding it as I do now from these questions and answers, I would an-

43433 swer it as I just have.

By Mr. Wooden:

Q. And that is to the effect that your answer would not have been changed?
A. That is right.

Trial Examiner Norwood: Would it be different if he said a typical number?

The Witness: I am sorry to be such a stickler for the meaning of words, but I would have to ask then what he meant by "typical."

Trial Examiner Norwood: If it meant the common method, what would your answer be?

The Witness: Well, if it had been the prevalent method —in other words, if railroads were rarely used for the

transporting of cement, then I would think it would be very unusual—surprising to find that the price pattern of this industry had developed as it had.

By Mr. Wooden:

Q. Then, to that extent it would affect your answer to the question?

A. No. I think—

Q. You said it would be surprising.

A. I said it would be surprising if the common method the transportation were something other than rail and that only occasionally freight were hauled by rail, or
43434 perhaps not hauled at all by rail. If you want to take an extreme case—

Q. Suppose we take other areas, sections of the country, and suppose we assume that is a very prevalent and common practice to haul cement of a mill by truck, and yet make the delivered price based on rail freight.

Mr. Bond: Does Your Honor think the question is clear enough?

Trial Examiner Norwood: I think so. If it is not, you can qualify it on redirect.

A. Yes, I recall that we went into the question of trucking. It seems to me there is sufficient explanation of individual self-interest, why manufacturers might use rail freights for these purposes, even in the type of case that you mention.

By Mr. Wooden:

Q. Where they might use rail freight to figure prices instead of using actual freight?

A. That is conceivable, yes.

Q. Even though the actual freight was frequently or even commonly lower than the rail freight?

A. Yes.

43443 Q. Well, don't you understand by the pattern to which your attention was directed that that is the way it comes out normally—I mean usually?

A. You mean usually mills are non-base mills?

Q. No.

A. It seems to me that is what you meant.

Q. That a non-base mill decides the question which you just posed.

43444 A. Decides to remain a non-base mill.

Q. Decides to take full advantage of its location and add the freight from the basing point.

A. I would not understand it that way, or you would not have as many base mills as you have in the country. Some mills must certainly have decided it the other way or you would not have base mills.

Trial Examiner Norwood: He was referring to non-base mills. Didn't the non-base mills decide that?

The Witness: My answer is the same, that some of these non-base mills must have decided it in the opposite way to Mr. Wooden's suggestion.

Trial Examiner Norwood: And thereafter became—

The Witness: And thereafter they became basing points.

Trial Examiner Norwood: I see.

By Mr. Wooden:

Q. I am trying to ascertain, Dr. Griffin, whether you recognize or assume in this most prevalent pattern of prices put to you, whether you have assumed that a non-base mill will add freight from the basing point to their local market and will absorb freight to the exact extent necessary to make their delivered prices the same as the base mills delivered price.

A. Naturally—

Mr. Bond: If Your Honor please, that is again 43445 contrary to the record.

Trial Examiner Norwood: Objection overruled. It may be contrary to some of the record, but there is some evidence in there to that effect.

Go ahead.

A. I do not know all of the particular details of whether that is always done or not, but it would not be a surprising thing to me that the non-base mill would absorb freight when selling in the market towards the base mill by the exact amount which was necessary for it to sell in that market. What other object is there for them to absorb freight other than to sell in the market in competition with the base mill?

By Mr. Wooden:

Q. Do you see any object of their absorbing freight by the exact amount other than to make their delivered prices identical?

A. I would describe it as saying that they did that in order to sell cement in the market. I assume that they have no desire in and of itself to have the prices identical.

The quoting of the price as low as is quoted by the base mill would be necessary in order to sell there, and their object is to sell in the market, not to maintain some theoretical concept of identity of prices. Economists are interested in that.

Q. You think as an economist there is nothing to be expected in the way of competitors' desire to have the same prices?

43446 A. I think the same prices result from desire of several competitors to sell in a market, and the fact that the buyers are well informed and control values. Given those facts, the prices have got to be identical in the market if the product is identical and buyers are well informed.

43447 Q. In other words, acting as competitors they do not aim at identical prices?

A. Not aim at identical prices. I have explained that acting as competitors with an identical product and well-informed buyers identical prices will emerge, but I think one could not say that competitors particularly desire identical prices.

43448 Q. I am asking you whether on the economic basis of consideration you see any ground for concluding that there was an objective of identity of delivered prices involved in this prevalent pattern.

A. I do not think that conclusion would be drawn from the hypothetical question.

Q. Well, you do agree, do you not, that this prevalent pattern described to you involves the systematic absorption of freight and the systematic addition of freight more than the actual freight to the exact extent necessary to make identical delivered prices?

A. Well, there are several things there. I would object to the word "systematic," but let us say the common, customary. And I don't—I would say it seems to me it would be quite natural that non-base mills would meet the

43449 prices of the base mills. That would involve an addition to their—that would involve freight absorption on one side and an addition of freight on the other side.

43450 Q. Wouldn't you say that unless freight absorption and the addition of fictitious freight were done exactly and systematically, then you could not have identical delivered prices?

A. There are two aspect of the question: One is the reference to fictitious freight which is added. Now, as I understand it a mill, non base mill in this case, or a base mill selling in another mill's territory, is quoting a price which is determined by some forces out of their control in that other market. I do not think you could describe that as taking their price and adding some freight, fictitious or otherwise, when they are meeting a price of another mill. It goes back to thinking of a price which is quoted as being
the summation of certain things, and it just is not—
43451 A. (Continuing.) I do not think it is necessary for assuming—any necessity of assuming it is systematic. If the mill which is going to sell in another mill's territory—if they are going to sell there at all,—they have got to quote a price which is as low as is being quoted in that territory; and unless they want to go below that price, then, of course, the price is going to become exactly identical so far as they can determine the price that is existing in that market.

Q. Can there remain a pattern of price unless they do absorb freight and add fictitious freight systematically? Wouldn't it destroy the pattern, in other words, if they do not do that?

A. Well, you are asking me if they did not absorb
43452 freight and use basing-point methods, would you have a basing-point pattern. Of course you would not.

Q. Dr. Griffin, assume that as a part of this pattern, most prevalent pattern of prices described to you by Mr. Bond, that there are two mills, two non-base mills located at Des Moines, Iowa, assume that there is a base mill at Kansas City whose base price plus freight makes the delivered price at Des Moines, assume that on Des Moines business the Des Moines mills add the freight from Kansas City to Des Moines to get the delivered price, thereby making their delivered price the same as the Kansas City mill's delivered price at Des Moines, assume that the Kansas City mill ships regularly into Des Moines, assume that the Des Moines mill also ships into Kansas City and that when they do ship into Kansas City they accept a mill net
which is as large as 80 cents a barrel less than they
43453 obtain at Des Moines, would you say that that is a normal and natural expression of competition between the two mills at Des Moines and the one mill at Kansas City?

Mr. Bond: I object. It is the same question, simply putting names, that is all.

Trial Examiner Norwood: The objection is overruled.

A. Yes. I think that that would be a normal sort of thing.

43458 By Mr. Wooden:

Q. Would you say as an economist under those conditions the Des Moines mills would be doing what is known as dumping some of their output into Kansas City?

A. Yes, as we said in direct testimony the term "dumping" customarily used in international trade has its analogy in domestic trade.

43459 Q. It follows, does it not, under those conditions the Des Moines mills were dumping some of their output into Kansas City in order to maintain the pattern of price at Des Moines, doesn't it?

A. Well, you are asking me to give reasons for doing so. I do not know that they would be, they are dumping—that is, they are selling in a distant market at the lower mill net than they are selling in their domestic market this is a rather common phenomenon. It is always implied in freight absorption, you see, of any sort, which we have said is a rather common practice of American industry.

43461 Q. Will you, as an economist, consider that a normal and natural phenomena of price competition for a base mill to put in a low base price at some non base mill's location when that non-base mill has been cutting prices?

A. I could not answer that without knowing the circumstances, and I think there is a place where we are again in the realm of psychology to know of the considerations that were involved in the minds of the mill that did this thing that you have described. There is an implication in what you say, it seems to me, that here was something that was done in retaliation. That is a normal competitive thing, it is quite possible that that might happen in an industry of imperfect competition. It is not necessary to assume collusion or the absence of competition in

43462 order to assume that a thing like that might happen.

Q. Do you think that putting in such a base under the circumstances outlined would have any relationship at all to the preservation or maintenance of the pattern which

the non-base mills had been departing from when they cut prices?

A. Well, in the non-base mill, I say I do not pretend to know all the details of these cases that you are talking about, but if the non-base mill does cut price then it seems to me that it is itself making itself a base mill.

Q. Even though it did not intend to become such?

A. Well, the question of being a base mill, as I understand it, is not a question of anybody's intention to become a base mill as such. It arises from the fact that a mill does quote a price which is lower than the price made at some other mill plus freight to some particular point. If it does that it becomes by that fact a base mill.

43463 Trial Examiner Norwood: Now, suppose, then, that all other prices were immediately quoted so that he could not cease to become a base thereafter, would that suggest to you a competitive setting?

The Witness: If he is quoting a price which is lower than the price that would be fixed by a distant base mill plus freight, then, as Your Honor said, he does become a base mill.

Trial Examiner Norwood: But suppose that he cannot get away from that thereafter, his competitor persists in continuing on that base, would that be a competitive situation?

The Witness: Yes, I would say it is a competitive situation.

43464 Trial Examiner Norwood: Well, as I understand it, a retaliatory price, you say, is one of the weapons of competition; is it not?

The Witness: Under some types of competition, Your Honor, one would not think of—

Trial Examiner Norwood: Well, it is ordinarily termed "cut-throat" but it is really competition, is it not?

The Witness: Oh, yes, yes, decidedly it is competition.

43467 By Mr. Wooden:

Q. Would your answer to Mr. Bond's hypothetical question as you gave it on page 42974 have been any different if—to the statement of assumed facts given on page 42970 with regard to decreases in price and reimbursement for past shipments on the decline if you were to assume that such a guarantee against price decline had been standardized at a five-day—on a five-day basis?

Mr. Wooden: Well, I will substitute for the word "Standardized," had been "fixed" at five days.

43468 A. No, my answer would not have been different on that assumption. The following of—the existence of customary terms such as that, is very common in American industry, net, trade, 30 days' time, privilege of post datings, and so on, those things become customary in the trade. The fact that they were all having this five-day limit would not be significant to my mind.

43469 Q. Would it have made any difference in your answer if a similar development regarding announcements of increase in prices had been made on a five-day basis?

A. No, because you are really asking me there to evaluate a very common practice in American industry, namely, of sales terms coming to be uniform throughout a trade. Now, again, do I come to the conclusion that there must in every case have been something other than normal competitive forces in order to enable commercial practices to become uniform. I do not think that is necessary to assume that at all.

Trial Examiner Norwood: In other words, you are stating that these things could have been an outgrowth of that whether there was any agreement or not?

The Witness: Yes.

43476 By Mr. Wooden:

Q. Would it affect any of your answers so far as you can now say if to those other assumed facts regarding rigidity of base price during a period of depression you were to add to it the factor—the assumed factor—that throughout that period production remained below 50 percent of the productive capacity of the industry?

43477 A. I cannot answer it.

Q. Do you think it a normal and natural expression of competitive forces for prices to remain unchanged over a period of four or five years, during a period of depression when the productive capacity of the industry remained at less than 50 percent, the productive output of the industry remained at less than 50 percent of the capacity?

A. It is quite possible to interpret such behavior on the basis of normal economic competitive forces in an industry of this kind.

Q. And with demand fluctuating during that same period?

A. Yes.

43478 Q. Dr. Griffin, referring again to your answer on page 42974 to the long hypothetical question, would your answer be any different if that portion of the assumed facts were to include the further assumption that the practice of discouraging and preventing diversions in transit had been in effect for many years, and that at various times during the course of the years the industry had formulated declarations against it?

43479 A. I think I said in my direct testimony, and I still believe, that it is reasonable to expect that individual—it is reasonable to expect that individual business men would object to this practice of diversion, and if for a number of years they attempted to prevent it, I think that would not be inconsistent with the assumption they were acting in their individual self-interest, and the further fact that the industry or some part of the industry had made a declaration against it would not change my view. There are a number of practices, I suppose, in many industries in which the representatives of that industry have expressed—to which the members of that industry have expressed opposition. It is not at all unusual.

43480 Q. Even though the expression should be an expression formulated by joint action of the industry?

A. Yes, even in that case.

There are cases of trade associations, of physicians, cases of groups of college professors, for example, who might pass a resolution saying that we oppose such and such a practice. That would not be unusual.

Q. That is of no significance to an economist?

A. Well, it might be significant as indicating the fact that the members of the industry did not like it, but it is only significant as to that. It would not necessarily have a controlling force upon the individual members.

Q. Not significant to an economist of anything other than independent individual action?

A. No. If I should see the advertising men of the country get together in one of their annual conventions and somebody introduces a resolution that "It is the sense of this body that we are opposed to testimonial advertising," which, incidentally, I think does represent the views of a

great many people in the advertising business, I should think that indicated exactly what it said, that they did oppose it; that expressed the opinion of the group of people who were present at the meeting.

Q. And if following that they did discontinue testimonial advertising, you would not think it of any
43481 significance the fact that they adopted a resolution to that effect?

A. I would not consider that it was conclusive evidence that they were acting because of that resolution.

Trial Examiner Norwood: Would you consider it as any evidence—

The Witness: No.

Trial Examiner Norwood: —tending to show—

The Witness: Tending to show that the resolution had controlled the individuals?

Trial Examiner Norwood: That they agreed on?

The Witness: That they had agreed?

Trial Examiner Norwood: Yes.

The Witness: No, I would not consider that there was any evidence that they had agreed. It might have the force of opinion of a large number. If the American Bar Association would express its it as opposed to certain practices, that expression by such an influential body might have some bearing upon the decisions of individuals.

Trial Examiner Norwood: Would you consider it any evidence on that point?

The Witness: No, I would not, not on the point of agreeing to do something.

Trial Examiner Norwood: Wouldn't it tend to show that their minds had met on the point covered by the resolution?

43482 The Witness: Well, the minds of those who voted for the resolution. You can't know whether there was unanimous agreement.

Trial Examiner Norwood: Coupled with the unacceptance of that by the individuals after the meeting, would you consider that as any evidence tending to show that their minds had met on that proposition?

The Witness: I would not draw that inference from it, sir.

43483 By Mr. Wooden:

Q. Now, Dr. Griffin, suppose you consider collectively all the additional assumptions of fact that I asked

you to consider separately with regard to Mr. Bond's long hypothetical question, and when you consider them collectively, instead of separately, as you have been doing, I ask you whether the collective consideration of those additional assumptions of fact would make any difference in your answer?

A. You mean in my answer—

Q. Your answer.

A. My first answer to the long hypothetical question?

Q. Yes.

A. Well, it is very difficult for me to bear in mind right now all of these changes in assumption that you have made, but I think I stated in direct examination that there were certain basic characteristics in certain industries which when present would seem to me to be in combination, would seem to me to be inadequate to explain a general—

43484 this general picture of the industry; that is, of the multiple basing-point method. Now, those factors were, I consider, basic. There are certain characteristics of the product. You had the product which was rather heavy, whose transportation was an important factor, but it is not so heavy as to make it impossible to transport the product some distance from the producing center—producing place. Secondly, when the product was substantially identical as produced by different producers; when there were certain characteristics of the producers, among these being that there were few, relatively few, I think,—that is, such a small number of them that they would naturally take into account the effects of their action upon the market; and I was there opposing it to an extremely large number of producers; when these producers are scattered, particularly scattered relative to the consumers, variously located relative to consumers; when these producers, a considerable number of them, were independently owned—

Q. Pardon me, Doctor. I do not mind your reciting your direct testimony as you are now doing, but I would like an answer to my question.

A. I am coming to the answer, and I am going to give you the reason for it.

Further, when I found that these producers have substantial overhead costs—that is characteristic of the industry.—

43485 A. (Continuing.) And, lastly, I considered among these basic factors, an inelasticity of demand.

Now, given those factors—some of them I have stated more briefly here—but given those factors, I would believe that a multiple basing-point method might naturally emerge as the result of the working of normal economic forces.

Now, in the long hypothetical question which was asked of me I believe that all of those factors are present, either explicitly stated or readily to be inferred from statements that were in the hypothetical question, and in addition there were a number of other assumptions. The questions which you have asked me now deal with these other assumptions. I would consider that as far as my answer was concerned they were superfluous; you can, therefore, eliminate them.

I am speaking generally. There may be some places where it was a contradiction of terms, but generally speaking you can eliminate those features to which you have been drawing attention, and my answer would still be the same.

So my answer to your question now—and I apologize for this long explanation—is that, taking these new assumptions, if I recall them all at the time, taking them in toto,

43486 they would not lead me to change my answer to that —my first answer to that long hypothetical question.

Q. Now, on page 42975 you testified in answer to Mr. Bond's question that you did not see how an economist could draw the inference of collusion or conspiracy from the practice as described in the long hypothetical question. Then, in answer to questions by the Examiner you testified that the same conditions could have been brought about by discussion, agreements, and understandings.

Now, is that the extent of your testimony here, that it could be one thing or it could be the other, but you do not have an opinion as to which it is?

A. Well, my testimony here has been rather lengthy, and I would not say that was true of all of my answers. There were some places I seem to recall where I said it would be difficult for me to imagine certain things to which my attention was directed resulting from collusion. But as to the long question I was stating that the—that I did not think that an economist could draw an inference of collusion.

43488 Dr. Griffin, when you did testify on direct on page 42975 that these conditions assumed in the long

hypothetical question of Mr. Bond could have been brought about either by collusion, discussions, agreements, and understandings, or by natural evolution, did you intend to express any opinion as to how they had been brought about?

The Witness (Addressing the Trial Examiner):

43489 Your Honor asked me, I believe, or you said just now that you would ask me not to express an opinion on the point.

Trial Examiner Norwood: Well, I think you may clarify that for the Counsel whether or not you have made any factual statement about it or expressed an opinion on the facts as he has stated there.

Mr. Bond: Whether he intended to express an opinion.

Trial Examiner Norwood: Yes.

Mr. Wooden: On the facts.

Mr. Bond: On the facts.

Trial Examiner Norwood: Read that question, and I will ask the witness to answer it.

(Question read.)

A. I did not intend to express any opinion as to whether the natural economic forces to which I referred had been implemented by agreements or collusion. I am saying that there are sufficient—there is a sufficient combination of natural forces present, in my mind, to explain the existence of this plan. I did not intend to express an opinion whether that had been aided or implemented by any agreements.

43494 Q. Now, with regard to this second hypothetical question of Mr. Bond, I will ask you the same question regarding it, the assumed facts in it.

A. That is the same question, what is it, that you are speaking of?

Q. The second question, which ends on 42980, and where you answered that, the assumed facts did not preclude the assumption of free competition, and I will ask you whether that historical development could have been also the result of collusion or combination.

A. I do not think that historical development could have been the result of collusion or combination. Collusion or combination could conceivably have been involved in it. It does not preclude the possibility that there was collusion or combination.

Q. And you did not intend to express the opinion

43495 or having your testimony taken as an opinion that under those assumed facts of Mr. Bond's that in

your opinion it was the result of natural evolution and without any element of collusion: is that correct?

A. I did not answer the question that way, and I would not; no. I would answer it as I did before, that the historical development would not preclude the assumption of free competition.

Q. Or would not preclude the assumption of collusion; is that correct?

A. It would not preclude the assumption that there might have been collusion or agreements at one point or another, although the historical development is quite consistently and readily explained without the existence of that assumption.

43496 Q. Will you explain to me how the basing-point system can meet local fluctuations in demand unless the basing-point price fluctuates according to those local fluctuations in demand?

A. It is not necessary that the price should fluctuate. Visualizing that here is a mill selling at a distance on a freight-absorbing basis, perhaps offering to sell—not really selling any considerable amount, partly because they are not pushing the business; the salesmen are not very actively soliciting the business; the demand in that market in question does increase, and it is feasible, therefore, for them to sell a larger amount without changing the prices or doing anything except to supply the larger demand that has arisen in that market.

Q. In other words, they meet the fluctuation in local demand by going into other territory without changing the price in the territory where the local demand has changed?

A. That might very well happen, yes. It is quite natural. If any business firm is selling in a certain part of the town, let us say, and not selling any considerable amount, but just being in the market in a half-hearted sort of way. Now, the demand in that part of the town,
43497 let us say, suddenly increases. Well, the seller in question will sell more of his product in that market and thus meet the demand. It would not call for his changing the price in that market necessarily.

Q. Well, so far as the price is concerned, then, you do not mean to say the basing-point system makes adjustments to meet local demand—changes in local demand?

A. It might have its effect on price even though this distant mill was not quoting a new price. The fact that the

distant mill can come in puts a restraining effect upon the local mill. You would not expect the distant mill to be the initiator of the price change. But the existence of the distant mill, and the fact that it will come in if the price change is made—that is, in that case presumably to take advantage of the larger demand that exists, then that local mill is restrained from doing that by the knowledge that some of the product will flow in on the freight-absorbing basis.

Q. Do you maintain that the basing-point system permits or facilitates an adjustment of price to local demand?

A. I do not know just what you mean by adjusting a price to local demand. The point I was just making is that if the local demand did increase, I think there would be—that the fact of the distant mills being ready and able to sell in this market on a freight-absorbing basis would constitute a restraining factor on the local mill.

42505 Q. When you answered the questions regarding—in which it was assumed that cement was a homogeneous commodity, did you understand by that that it was almost identical in quality?

Mr. Bond: Which particular question?

A. To what are you referring now?

Q. Just merely the questions which assumed that cement was a homogeneous commodity.

A. You say when the assumption was made.

Q. That it was homogeneous, did you understand by that that it was almost identical in quality?

A. Well, I meant by homogeneous, I would gather from the term "homogeneous" that it is almost identical from the point of view of the buyers of the product. It is not necessary that some other person's point of view, even from an engineer's or a physicist's point of view that the product should, in fact, be identical. It is the buyer's opinion that controls in such matters.

Q. When you spoke on page 42987, line 23, of a standardized product, did you have in mind that cement

42506 was a standardized product?

A. If it is an answer to that same series of questions concerning these factors, I did not refer particularly to cement. I referred to any products that had these characteristics, or industries that had these characteristics.

Q. In your opinion as an economist can standardization of a product to the point of making it substantially or almost identical in quality take place in an industry with a

large number of competitive units without some cooperation among them?

A. Yes, that is quite possible.

43508 Q. You would not see, then, any objection from that standpoint as an economist to requiring mills to sell f.o.b. mill, would you,—the delivered cost would have to be the same in any event, you say, therefore you could not see any objection, could you?

A. An objection growing out of that—I hope this is responsive to your question—there would not be, under the uniform f.o.b. mill, a number of mills selling at the same point. If a number of mills did sell at the same point under any conceivable plant, assuming that buyers are well informed, and so on, the prices would have to be uniform, the net prices or cost to the buyers would have to be uniform. My objection growing out of that particular point, then, is that the—that it would reduce the number of sellers selling to a particular market.

Q. So it is your belief that buyers just have to pay the same price to every seller; is that right—it must be?

A. Well, I, speaking only as an economist who deals with trends, and strong tendencies, but I should say that the tendency was very strong, given a group of in-
43509 telligent and well-informed buyers being offered in a certain town a product which is substantially identical, I should say that the tendency was very strong to the creating of a uniform delivered cost to those buyers if they are aware of their own interest and alert to it, it would certainly have to be.

Q. And from that standpoint it would not make any difference whether you had a basing-point system of delivered prices or an f.o.b. mill method of selling?

Mr. Bond: Now, do you mean uniform f.o.b.? The last time you used that the witness took it one way and you did not state it in your question.

Trial Examiner Norwood: Read the question.

Mr. Wooden: All right. I will put the word "uniform" in.

Trial Examiner Norwood: Read the question as corrected.

(Question read as follows:

"Q. And from that standpoint it would not make any difference whether you had a basing-point system of delivered prices or a uniform f.o.b. mill method of selling?")

A. From the point of view of having identical prices, that is, of net costs to the buyers, there would be no difference between those two plans. Any plan would have to give you that.

By Mr. Wooden:

43510 Q. Now, you made the statement on page 42990 that perfect competition assumed thousands or millions of producers. You would not want to say how many thousands or how many millions, would you?

A. No., It would not be the same in all cases. I have indicated the test, namely, such a large number of producers, so that no one of them considering his own immediate individual self-interest would be influenced in his actions relative to the market by the effect that he—that those actions—would have on the market. Now, how large that number is no one can say, but the larger the number the more pronounced that effect, ordinarily, although there are other factors that would enter into it, too.

Q. Would you say that in a given industry 500 producers might be enough to approximate conditions of perfect competition as to number?

A. In some industries; if you had 500 producers selling to the same—selling in the same market, that might be enough to, well, decidedly approach that condition.

Q. Then, it is not strictly true that the theory of perfect competition assumes thousands or perhaps millions of producers?

A. No economist that I know of has ever attempted to set the precise number, but the test is quite clear, that is, as I have described it before, and no economist could state the precise number because clearly the number would not
43511 be the same in all industries under all circumstances.

43512 Q. In other words, you see an occasion for a basing-point method lying in the fact that the transportation costs are substantially different?

A. That is one of the factors that, taken with the others of the seven, that would lead me to state that a basing-point method might naturally develop in such an industry.

43514 Q. Do you think the natural locations, the natural advantages of location among competitive sellers is something that should be preserved or something that should be eliminated?

Mr. Bond: Well, do you mean advantages as to buyers? Are you still speaking with reference to that?

Mr. Wooden: With reference to their transportation costs.

Mr. Porter: Your Honor, I don't think that the question as to whether something should be done is an economic question. I think that gets into the realm of morals.

Trial Examiner Norwood: It might be public interest, as counsel suggested.

Mr. Porter: Well, if he frames it that way—that is not what he said. He is asking for moral judgment.

Trial Examiner Norwood: I would not say that.

A. I was about to say it myself, Your Honor. You are asking me for ethical judgment when you say "should be allowed."

By Mr. Wooden:

Q. I want your judgment as an economist.

A. Well, then, you would have to rephrase it, I am afraid, Mr. Wooden, because just to ask whether it should or should not—

Trial Examiner Norwood: I think you can answer that from an economic standpoint as to whether it is best
43515 economically to do that or not.

The Witness: Well, if you ask that question, you are asking whether everything that is involved in the conceived advantages, and which would be implied by changing this situation, whether all of that taken together in my opinion would be in the public interest.

Trial Examiner Norwood: Yes.

Mr. Wooden: That is not my question.

The Witness: Then, we are getting into a very long question which I have already answered, and amplified.

By Mr. Wooden:

Q. My question is directed solely to this one factor, of the natural advantages of location.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Bond: May I note a formal objection, if Your Honor please.

Trial Examiner Norwood: Yes. The objection is overruled.

Answer that from a public interest standpoint.

A. There are two ways in which the term "advantage of location" can be viewed. There is advantage of location relative to sources of raw materials, relative to labor and

other productive factors, that is advantageous location from the point of view of production costs; and
43516 advantageous location from the point of view of nearness to the market.

By Mr. Wooden:

Q. It is the latter that I am talking about; in other words, transportation cost of the finished product.

A. And you are asking me whether it is in the public interest to preserve natural economic advantages.

Q. Of location.

A. If they are natural economic advantages of location then the free working of the economic system would preserve them. An economist is concerned with how it would work, whether they would be preserved, not with whether he would like to see them preserved.

Q. And if they are not preserved, is that any indication to you as an economist that there is any artificial interference with the play of competitive forces?

A. No, one could not conclude that. Any natural advantage of location might cease to be a natural advantage of location, but the fact that the location of markets changed because of a number of factors would not necessarily involve any contrivance on the part of anyone.

Q. Do you think that a competitor who has a substantial natural advantage of location should under normal economic conditions fail to use any part of that advantage in selling in the territory where he has that natural economic advantage?

43517 A. I would expect a competitor to decide a question of that kind in view of his—what he conceived to be his own self-interest, his own economic self-interest; the cost of attempting to maintain this so-called natural advantage of location might be more than—might be greater than the benefits were worth, so that goes back to the same old question again, Mr. Wooden, of how does the business man decide whether he is going to try to put his base price down low enough so as to exclude all competitors from his market. Well, he decides it presumably on the basis of weighing all of the considerations on one side and the other, and that is a great complex of considerations; no one could generalize about that.

Q. Well, wouldn't you say that when the basing-point system of delivered prices is functioning completely that so far as price is concerned all competitors having a natural

advantage of location are failing to use it, while all competitors having a natural disadvantage of location are permitted to compete on the same terms as to price?

A. Those are extremely broad terms and assumptions. The implication is also, I believe, present in the question that the system is in complete force, did you say?

Q. Yes.

43518 A. Operation, which implies that the individual mills do not have the power at the moment of doing anything about it because they are already committed by agreements, and so on.

Q. No, I do not imply that.

A. Well, then—

Trial Examiner Norwood: Suppose the system has gradually grown up, nevertheless exists.

The Witness: If the system has gradually grown up and individual mills are free to make themselves basing points or not, just by the fact of fixing their price in a certain way, then I do not think that the conclusion you suggested could be properly drawn.

By Mr. Wooden:

Q. Now, Dr. Griffin, let us assume that the system has grown up fully as a natural evolution, wouldn't you agree that nevertheless under that system the natural advantages of some mills in their location and the natural disadvantages of other mills in their location with reference to a particular destination has been eliminated?

43519 A. No, I would not, for I assume that the system growing up as we have described in a natural way involves—I am making the further assumption, I think it is justified here, that the mills are individually free to act on their own judgment, that is that they are not bound to previous commitments and agreements, then it is true that some of them might be willing to forego the complete exploitation of this natural advantage and location. If they did do so they would be doing so in view of what they regarded as their own individual best interest, and therefore considered that anything they might lose by foregoing that advantage they were gaining in some other respect.

Q. Well, now, answer my question. I meant, of course, and I hope you understood it that way, that the advantages and disadvantages of location were eliminated so far as they affected price, delivered prices.

A. Only in so far as each individual business man would

decide to forego that natural advantage, and one
43520 cannot generalize as to whether he would do so or
not, as we have said before—we have been over this
whole thing.

Trial Examiner Norwood: Well, could you answer that question without adding any assumptions?

The Witness: I was merely explaining, I was not adding assumptions, Your Honor, I was merely explaining the assumptions that I thought were implicit in the question, but I want to be perfectly clear that they were, and since Mr. Wooden has not questioned them I judge that our minds are meeting on that point.

Mr. Wooden: Well, if I attempt to interject a question I am accused of interrupting you and I do not like to do that.

By Mr. Wooden:

Q. You see nothing in the basing-point system as an economist from which you could conclude that so far as delivered prices are concerned the natural advantages and disadvantages of various mills and their location with given destinations has been eliminated?

43521 A. I would not think that the existence of the basing-point method, meaning by that a general method used throughout the country, particularly had that effect. I conceive that any mill that is—regardless of where it is located, might deliberately decide in view of all the factors concerned that it would meet the prices that any other mill could make in its market but would not try to make a lower price. That does not imply the existence of a whole basing-point method, just two mills might be in that position.

Trial Examiner Norwood: But he is asking you to assume the existence of the basing-point method.

The Witness: Yes.

Trial Examiner Norwood: And that the mills conform to it in every particular, whether of their own free will or other.

Mr. Wooden: I have assumed free will for the purpose of the question.

The Witness: I understood him to ask—

Mr. Bond: I understand it means as to whether the basing-point method, as described in our long hypothetical question.

Trial Examiner Norwood: Yes.

The Witness: I assumed that it asked whether the basing-point method had that effect upon delivered prices.

Trial Examiner Norwood: When it is applied, 43522 does it have the effect of reducing these advantages in one mill and adding to the advantages of the other, or subtracting from the disadvantage of another?

Mr. Porter: Your Honor, I think the question has to do with the prices to the consumer, not the advantages to the mill. Your question said the mill.

Trial Examiner Norwood: No. Let him answer mine. Read my question.

(Trial Examiner's question read.)

The Witness: Well, the existence of a method of this kind would, I can see it—I think perhaps I am getting at the point you are after now—would have an advantage to certain mills that find themselves disadvantageously located relative to markets. I want to qualify that, however, by saying that it does not thereby give those mills in question an advantage. The most that you can say is that it minimized, or reduces a natural disadvantage that they might have, that they would—that no mill would think of establishing itself, no company would think of establishing a mill disadvantageously merely because of the fact of the existence of this method, and I would like also to refer back to a previous statement that there are various ways in which the advantage of location arises, and that advantage of location arises out of being located favorably relative to costs of product as well as to markets.

43523 By Mr. Wooden:

Q. I did not want to go into anything except the cost of transportation.

A. Very well.

Trial Examiner Norwood: Proceed.

Q. Isn't the effect of the basing-point system, as you understood it from the long hypothetical question, to put the mills with natural advantages of location and their competitor mills with natural disadvantages of location on a parity with reference to their delivered prices as to given destinations?

A. Well, mills are always on a parity as regards delivered price at any given point anyway. If I understood your question to refer to their relationship as to delivered price.

Q. I am asking you if the system as you understood it

and testified about didn't have that effect of putting the mills with natural advantages and those with natural disadvantageous location on a parity as to delivered prices?

A. I do not know what you mean by being on a parity as to delivered prices except possibly that the de-
43524 livered prices quoted by these different mills would be the same.

Q. That is what I mean.

A. Well, I explained before that that would have to exist by virtue of well informed group of buyers buying a homogeneous product.

Trial Examiner Norwood: Well, couldn't you answer that question "yes" or "no," and then make your explanation? Could you or not?

Read the question.

Does it or does it not put them on a parity?

The Witness: My answer is "no," because the thing that puts them on a parity is something quite different from that, and they would have to be on a parity whether you had that method or not.

By Mr. Wooden:

Q. Oh, you think the method has no bearing on the question, you would get the same results regardless of any method; is that right?

A. I hope I understand what you are asking. But I mean this, that if two sellers are going to sell a homogeneous product in a certain market to a group of buyers who are well informed, then they have got to be on a parity as to delivered prices regardless whether you have basing-point methods, uniform f.o.b. methods, or any other method, therefore you cannot attribute that particular thing to the existence of a basing-point method.

43525 Q. And I take it, in your understanding of the long hypothetical question that described the system and stated that the most prevalent pattern of prices produces identical delivered prices, you mean to say that you did not attach any importance to the fact that that result was brought about by the method?

Mr. Bond: I object, if Your Honor please. I think that is simply arguing with the witness.

Trial Examiner Norwood: The objection is overruled. Answer the question.

A. I think that my two answers would not be inconsistent. I think perhaps the existence of a method of this

kind would have—one of its characteristics would be identical delivered prices in any given town, but as I have said before you would get identical delivered prices under any other kind of system, therefore I would not say that it was the result of it, even though it did accompany it.

By Mr. Wooden:

Q. Do you say that under any conceivable condition of competition that the natural advantages and disadvantages of location of various competitors is something that can be ignored?

A. No, it cannot be ignored, but it has no bearing on the question whether you are going to have uniform delivered prices existing for homogeneous products in a given market at a given time.

Q. It can be ignored for that purpose?

43526 A. Yes, ignored for that purpose.

Q. Did you ignore it in your answers to the questions?

Mr. Bond: Which questions?

Mr. Wooden: The hypothetical questions.

Mr. Bond: Which ones?

Mr. Wooden: Well, the first long one, then.

Mr. Bond: Thank you.

A. I am sorry. Just what is this that you are asking me,—whether I ignore, now?

By Mr. Wooden:

Q. Whether you ignored the method when you answered the first long hypothetical question.

A. Oh, no. It was employed—it was stated in the hypothesis, and I was asked a question covering a number of hypothetical conditions. I certainly did not ignore it. That question was not asked, however, as I recall it, as to whether I would expect the uniform prices in any given market; that is quite a different question.

Q. What is your answer to that question?

Mr. Bond: To what question?

Mr. Wooden: The one he just said was not asked.

Mr. Bond: Is the witness questioning himself?

Mr. Wooden: The one he said was not asked, I will put it as a question.

A. Well, just for the form of the thing, would you

43527 care to phrase the question and I will attempt to answer it.

Trial Examiner Norwood: Read it.

Mr. Wooden: No. Answer this question that you said was not asked.

(Witness' previous answer read.)

Trial Examiner Norwood: You mean as to whether he would expect uniform prices in any given market where this pricing method is employed; is that what you mean?

Mr. Wooden: I am not quite clear what is in the witness' mind, but I would like him to answer the question which he said was not asked.

Mr. Bond: I would like to have Mr. Wooden do the questioning.

Trial Examiner Norwood: I think Counsel will have to frame a question if he wants him to answer. None of us understand it very clearly.

By Mr. Wooden:

Q. What did you mean, Dr. Griffin, when you said you were not asked the question of whether you would expect uniform delivered prices in a market?

Mr. Bond: I object, Your Honor. It seems to me that is just wasting time. What did he mean when he said he was not asked a question.

Trial Examiner Norwood: Let's see if this is not an answer.

43528 A. The sense of what I was saying was that I was asked the question as to whether an economist could draw an inference of collusion and as to whether you could expect a given method of marketing to develop naturally. Now, that question was not something else of an infinite number of things.

By Mr. Wooden:

Q. I will ask you, then, whether you as an economist would expect uniform delivered prices in a market in the sense that you used?

Mr. Bond: Under what conditions?

A. In a market under the assumptions of well-informed group of buyers, and several sellers offering a substantially identical product, yes, I would expect to find identically delivered prices.

Q. Assuming that.

A. With the multiple basing-point method or without it.

Q. And you would consider the delivering point the market?

A. Of course. You were referring to delivered prices?

Q. Yes.

Now, would you expect chain mills to supply their demands, fill their orders, by shipping from their nearest mill to the destination?

Mr. Bond: Would you mind explaining what you mean by "chain mills," for the record, Mr. Wooden?

Trial Examiner Norwood: I think everybody knows that.

43529 Mr. Bond: I have not used it with the witness.

Trial Examiner Norwood: The objection is overruled.

If the Doctor does not know what chain mills are he can tell us.

The Witness: Do you mean a chain mill company, a company owning a number of mills?

By Mr. Wooden:

Q. Yes.

A. Would I expect them to supply their cement from the nearest mills?

Q. Yes.

A. Oh, I would expect them to take a number of factors into consideration, the cost of production, the relative degree of employment, facilities of the different plants, what they considered the efficiency of the different plants, as well as the matter of location. Another one of those business judgments that would involve—probably call for a meeting of the board of directors, and they would thresh it out throughout the meeting.

Q. You do not see anything as an economist to indicate that it would be generally better policy to ship the product from the nearest mill with the lowest transportation cost of a chain mill, chain company?

A. That is one factor that would have to be taken into account, and by the question itself almost indicate that that would be a factor, one factor, favorable to doing

43530 that, but there would be many others involved.

Q. In that respect, a chain company would be doing just what a company that controlled the whole commodity would be likely to do, wouldn't it?

A. That is a pretty large question, too. I don't know that you could say that, because the chain company does have some competing mills whose actions it has to take into account, so you would have a different picture when you had one grand monopoly of the industry.

Q. I am talking about, of course, after an order has been

taken, where it will ship it from. Wouldn't that be logically from the mill with the lowest transportation cost?

A. Well, as I have said before, that is a factor that would have to be taken into account, the cost of production at that mill, and various other factors would have to be taken into account even if—well, I don't need to add that.

Q. You would agree, I suppose, that a company that had a complete monopoly could make an identical delivered price throughout the whole area that it served?

Mr. Bond: I object, if Your Honor please; one seller having an identical price with himself at every point in the country?

Mr. Wooden: Why not?

Mr. Bond: You have got one price.

Trial Examiner Norwood: He may be approach-
43531 ing something.

Mr. Bond: You can have one price. You cannot have identical—two things when there is only one thing.

Trial Examiner Norwood: He may answer.

Mr. Wooden: A different price, different parts of the country, different classes of trade, a very common thing.

Trial Examiner Norwood: Answer it.

The Witness: Will you read the question, please?

Trial Examiner Norwood: Read the question.

(Question read.)

A. Do you mean identical to all different points?

By Mr. Wooden:

Q. Yes.

A. Oh, I suppose a company that had a monopoly could do so. I do not know why it should want to do so, but it could have the so-called postage stamp theory of prices which, as I understand it, is what you are describing, the price is the same at all places regardless.

Q. Will you agree that a chain mill, if he had no competitors, could make the same delivered price from all of its mills?

A. You are defining exactly the condition of the complete monopoly. A chain mill that has no competitors is a complete monopoly, and it would be clear that they could do almost anything they wished as regards prices. They could do anything they wished as regards price ex-
43532 cept to raise it so high that nobody could buy their product, and they could do that if they wanted to.

Q. I mean by that last question, that the chain mill could

make its delivered price the same regardless of which mill it shipped the product from.

A. Oh, yes,

Q. In other words, it could see to it that its own mills did not compete with each other; isn't that correct?

A. I cannot conceive of its own mills competing with one another. How can you conceive that two parts of your own business are competing with one another in the usual sense. I suppose you might say there is a sort of schoolboy rivalry that might be stimulated between the manager of mill "A" and the manager of mill "B." They are not truly competing in an economic sense if they are owned by the same company.

Q. Would you be astonished at the idea that different mills of the same chain company might have different delivered prices?

A. Different delivered prices in the same market?

Q. Yes.

A. To the same group of buyers, which was effective at the same time?

Q. You would be astonished, wouldn't you?

A. If I understand your assumptions, that you are assuming a group of well-informed buyers buying a homogeneous product, or a product that they consider is
43533 homogeneous and two different prices are existing in that market at the same time, yes, I would be surprised, and being paid by the same—with the same group of buyers.

Q. And under the same ownership, you would be astonished at any difference in the delivered prices?

A. You may have some—there might be some explanation of such a thing, but I would find it difficult to believe that I, as a buyer, would pay more for a homogeneous product which came from one mill owned by a certain company than when it came from another, if I had free choice of selecting.

Q. Now, when mills under different ownership and competing with each other are able by some method of marketing to get the same results in identity of prices, of delivered price, would you say that they are getting the same results that a monopoly would obtain?

Mr. Bond: What does he mean by saying if they are able to get the same results, the same as what?

Mr. Wooden: The same results as to identical delivered prices.

Trial Examiner Norwood: I think that is very clear.

Mr. Bond: I am sorry. I am sincere in my objection.

A. Well, that is asking me the same question again, would I expect, when you had mills independently owned and selling in a given market with the buyers well informed and the product being a homogeneous prod-
43534 uct that the delivered price would be identical.

Yes, it would be identical under conditions of monopoly or under condition of competition, assuming that the buyers had the freedom of choice to buy from whom they wished regardless of any system.

By Mr. Wooden:

Q. You would assume that two opposites would produce the same result?

A. Well, on that particular point, yes.

Mr. Bond: Isn't that purely an argument?

Mr. Wooden: On that particular point.

Trial Examiner Norwood: Well, I think he is within range of proper cross-examination on these opinions he has expressed here as to whether or not there is competition.

The Witness: May I correct that last answer, or add to it?

Trial Examiner Norwood: Yes, certainly.

The Witness: I spoke perhaps too quickly.

Would you read the question so that I can see just how it reads?

(Question and answer read.)

A. Strictly speaking, I should say that the two opposites do not produce the same result. The same result is produced by the fact that you have a homogeneous product being sold to a group of well informed buyers who are free to choose. The identical price does not arise
43535 there out of the monopoly condition or out of competitive condition but of that simple effect which we have been over several times.

By Mr. Wooden:

Q. Now, you are willing to explain away the existence of monopoly as having no bearing on that identical price but merely the nature of the commodity; is that right?

A. The actual effective meaning of that price paid in any market having a homogeneous product, by buyers who are well informed and who are free to make their own

choices between offerings, under those circumstances you are going to have identical price regardless of conditions of ownership.

Q. Will you say that all—

A. If there are several offerings made.

Q. Would you say that all the debate, labor put in on this question, whether monopoly exists, is just a waste of time because you get the same result whether you had monopoly, collusion or not?

43536 The Witness: I certainly would not assert that it would be a waste of time to determine whether a monopoly exists or not, and presumably it would not be a waste of time to determine how that monopoly came into existence, whether it was conceivably legal or not legal. I defer to the judgment of you gentlemen; I assume that that is worth while.

43537 As to determining the question of why you have identical delivered prices actually being paid to more than one seller in a given market for a homogeneous product when the buyers are well informed, I should have to say with all deference to this court that it seems to me that that would be a waste of time because that, it seems to me, would have to follow in the very nature of economic activities.

By Mr. Wooden:

Q. Now, Doctor, referring to your testimony on page
42991 and 42992, with regard to inelasticity of demand and the manufacturer going into distant markets,
43538 do you see, at the bottom of page 42991 and the top of page 42992.

A. Yes.

Q. Haven't you assumed there that when he goes into the distant market that the demand rather is relatively elastic instead of inelastic?

A. No, I had not assumed anything about that because he is not using price as a means of getting additional trade; I mean to say, that he is just accepting the price that exists in that distant market. Now, inelasticity of demand refers to the effect which price will have upon the total amount of demand. When a mill sells on a freight absorbing basis it is not attempting there, I assume, to increase the total—to increase the total sales of cement in a distant market, but to get part of the sales of cement which are regularly being made in that market.

Q. Well, if the demand in the distant market is also inelastic as well as in his home market, how does that help him?

A. Well, it does not seem to me that problem enters into the question, because, as I said, "inelastic" is just a question of relation of price and the amount of demand; when you say that the demand in the distant market is inelastic that is probably true as well as of the home market, but that does not preclude the possibility of this freight-absorbing mill going in and getting part of that existing business.

43539 Q. At the same delivered prices as the mills at or close to that distant market?

A. Yes.

Q. Now, as an economist, would you say that demand is inelastic because of price rigidity, or the price rigidity causes inelasticity of demand?

A. Well, they are two quite different things, and—

Q. That is why I am asking you the question.

A. And I do not think one can answer that question generally. No, you could have rigid prices under elastic demand, you could have rigid prices under an inelastic demand.

Q. Aren't you setting up exceptions?

Mr. Bond: Let him finish.

Trial Examiner Norwood: Yes.

A. No, I think not. Inelasticity refers—well, I think that is clear enough.

By Mr. Wooden:

Q. If you are not setting up exceptional cases in that answer then do you mean to say that there is no relationship between price rigidity and elasticity of demand?

A. No, I would not say that, but that relationship is one that the—the effect of elasticity or inelasticity varies as between different market situations. For example, I mentioned I think I mentioned in direct, that in the wheat market, if we could suppose that we have an inelastic demand, in that case you have in that market a supply

43540 which is not subject to control even of the individual producers of the product. We went into that as to why the supply could not be readily adjusted to demand, and therefore, year after year you have sometimes a larger harvest, sometimes a smaller harvest impinging upon this market. Now, given that set of circumstances,

the fact that you have an inelastic demand for wheat means that you have widely varying prices from year to year, and, of course, the opposite of rigidity, but you get all sorts of combinations of factors. I cite that just as one.

Q. Are you unwilling to agree as an economist that a rigid price may be a positive factor in inelastic demand?

A. That rigid price may cause inelastic demand? I do not see how that could happen.

Q. It has no relation to—

A. Oh, I did not say that. I said, I understood you to ask whether rigid price could cause inelastic demand or be a positive factor.

Q. A positive factor.

A. Affecting inelastic demand. No, I do not see how rigid prices could affect inelastic demand.

Q. You as an economist then say that rigidity of price will not tend to create inelasticity of demand; is that your testimony?

A. Yes, they are quite different things.

43541 Q. Do you also testify that a marked lack of rigidity in price has no effect upon elasticity of demand?

A. Yes, that would be my opinion, rigidity, high variability of the price I do not see would affect the elasticity of demand.

Q. You then would say, I suppose, that assuming that base prices in this industry did not decline between 1932 and 1937, had no bearing upon the state of demand for the product during that period; is that right?

A. The fact that these prices did not decline during this period did not have any effect upon the total demand for the product? Oh, well, that becomes a question of the degree of elasticity of demand for the product. Now, you are asking me whether a price decline will stimulate demand?

Q. Yes.

A. In the case of an elastic demand, yes. In the case of inelastic demand, no, with the relative variations between them.

43542 Q. Don't you agree, as an economist, that there has been common expert economic opinion to use rigidity of prices as one indication of lack of price competition?

A. Yes, I think some economists have done that. I

indicated in my own testimony that I did not think that rigidity per se could be accepted as an evidence of lack of competition, or, to put it the other way around, you might take the extreme case, there is no reason, in my opinion, for assuming that a monopolist would want to maintain an unchanging price and would because being a monopolist he could, maintain a rigid price. Now, I am quite confident that that statement would be assented to by most economists.

Q. You recognize there is a difference of opinion among economists on that point as to indications flowing from rigidity?

A. Well, there have been many explanations of rigidity, yes, but as to this proposition that I am making now, that you cannot infer rigidity, or you cannot infer monopoly from the fact of rigidity.

Q. Alone?

A. I think any economist—

43543 Q. You mean standing alone?

A. Well, even as a factor.

Q. Not a relative fact—

Mr. Bond: Wait. Let him finish. You have interrupted him twice.

Trial Examiner Norwood: Let him finish.

A. I do not think that you would take rigidity in itself as certainly very convincing evidence of the—

By Mr. Wooden:

Q. Is it relative at all?

Mr. Bond: Now, wait.

A. ——of the existence of monopoly or partial monopoly. I say that because I see no reason for thinking that even an absolute monopolist would want to maintain a rigid price. What an absolute monopolist wants is to get the highest return he can get, of course, and there is no reason for thinking that that highest return, given varying conditions from month to month and year to year, would be maintained by maintaining the same price always.

Q. If you as an economist were considering the pros and cons of the economic indications of lack of competition in an industry, would you exclude the factor of rigidity in price as irrelevant to your consideration?

A. I think probably I would consider it, but I would

want to know all of the other factors of the industry
43544 to see how that would fit into the picture. I do not think you could take that factor as itself and generalize. I do not think you could generalize about it. Sometimes I would come to the conclusion that rigidity of price was an evidence of competition, sometimes I would come to the opposite conclusion. You could not generalize.

Q. But you would conclude that it was a logical relevant factor to be considered, wouldn't you?

A. Oh, if one were looking at all, one going into those conditions would look at all things about the industry and he probably would include that to be taken into account in connection with all other factors in the industry.

43545 Washington, D. C.,
Thursday, September 12, 1940.

43547 DR. CLARE E. GRIFFIN, thereupon resumed the stand and testified further as follows:

Cross-Examination (Continued) by Mr. Wooden.

Q. Dr. Griffin, in considering the subject of the inelasticity of demand, would you see any objection to treating inelasticity of demand as equivalent to rigidity of demand?

A. Yes, I see considerable objection to that.

Q. What was it?

A. I pointed out in my definition of elasticity of demand that it related to—had to do with the relation between price and the amount that would be bought, and that it should not be confused with variability of demand, or its opposite, rigidity, nor should it be confused with expansibility of demand, which might
43548 arise from factors other than price.

Q. In other words, you are referring to a long-run effect rather than temporary effect, or effects within the whole?

A. No, sir; I am not referring to long-run effect. I am referring to the functional relationship that exists between two factors; namely, price and number of units that will be bought.

Q. You tie it closely, in your opinion, to price, as I understand it?

A. Yes, sir; that is what it means. It refers to the effect of price upon demand.

Q. What would you say if demand went down and prices went up at the same time?

Mr. Bond: What would he say?

Mr. Wooden: Yes.

Mr. Bond: I do not understand the question.

Trial Examiner Norwood: Do you mean what explanation would he give?

By Mr. Wooden:

Q. Yes. What economic explanation would you make since there is this relation, as you just said, between demand and price, what would you say when the price goes up and demand goes down at the same time over a period of several years?

A. When the demand goes up?

Q. No, when the demand goes down and price 43549 goes up over a period of several years.

A. I do not think that would indicate anything necessarily concerning the elasticity of demand. There are a number of combinations of circumstances that might give rise to that. For example, if the—even at a time when the demand was declining, if it should appear that costs were out of line with price, and that costs were above prices being paid, then it is quite possible that producers would decide to produce less of their product, that they would refuse to produce the amount desired at that price, and in the case of manufacturing industries, they might deliberately set a higher price for the product because the previously existing price was an unprofitable price. That would have no particular bearing upon the—or, rather, that would establish nothing concerning the inelasticity of demand for the product.

Q. Now, Doctor, you told us just a few minutes ago that demand and price were related in this equation of supply and demand.

A. Yes.

Mr. Bond: No, he has not mentioned supply and demand.

The Witness: Oh, supply and demand, no, I did not say anything about that.

By Mr. Wooden:

Q. But they were related in the question of—on 43550 the question of elasticity of demand or inelasticity of demand?

A. That elasticity of demand refers to relationship of demand and price, yes, that is my statement.

Q. Now, you bring some other factor into it such as costs that may affect it.

A. That may affect the prices which are actually charged, that is what you are asking me?

Q. Yes.

A. That is a very different thing.

Q. Isn't it always true, when you are considering any particular principle that you can bring in some third factor that will affect the application of that principle?

A. Well, if you are dealing with the application of a principle, then generally there are other factors. The principle of elasticity refers simply to the relation of two factors, price and the amount of demand.

Q. Now, confining your testimony to that principle, disregarding other things that might affect it, would you say it a normal thing for prices to go up as demand went down?

A. Well, you are stating two things, that demand is going down as price goes up.

Q. Yes.

A. Nothing very surprising about that.

Trial Examiner Norwood: Can you answer that, Doctor, "yes" or "no," is that normal or is it not normal?

43551 The Witness: If I had no other factors before me, I was simply told that there was a situation in which as price went up demand went down, I would say that was a normal sort of thing to happen.

By Mr. Wooden:

Q. Abnormal or normal?

A. Normal.

Q. In other words, the relationship between demand and price is such that it is normal for prices to go up as demand goes down?

A. You are reversing the cause and effect I have just suggested.

Q. I am not saying which is cause and which is effect.

I am simply calling attention to the two factors as of the same time.

A. No. If you had no other—I think I see your meaning now—if you knew nothing else about a situation except that the demand had gone down, then I would not expect that factor in itself to cause prices to go up.

Q. Would they normally go up as demand went down?

A. If I had only those two factors before me I would say that they would not normally go up as demand went down, but in an actual situation you never do have just those two factors involved, price—

Trial Examiner Norwood: Now, you do not have to go outside; you have answered the question once and
43552 do not give any further explanations until they are asked. We are letting this gradually enlarge into discussions. Counsel on the other side will ask you the explanations.

By Mr. Wooden:

Q. Well, now, Dr. Griffin, as an economist what sort of a measure would you use if you were seeking to ascertain whether in a given industry the demand were elastic or inelastic?

A. Practically it is very difficult to get any quantitative measure of elasticity of demand. One can draw some conclusions from observing history of prices and the apparent relationship between price changes and volume of demand. There have been some attempts at statistical studies in some industries. I have never seen one in this industry to try to measure that quantity, but it is one of the most difficult statistical problems with which economists and statisticians have to deal.

Q. Would you say that a demand is approximately represented by the amount sold during a year?

A. Demand is defined by economists as the number of units that will be taken at any given price.

Q. Then you could measure demand by considering the amount of sales, gross amount of sales?

A. Not for this purpose, because—and that is why there is such a difficult statistical problem, that the conditions, all the surrounding circumstances, are different at one time
43553 than another. Ideally, if you could get two situations that were precisely the same in all respects except that prices had changed, and then could meas-

ure the effect of that price change upon demand, then we would be approximating the laboratory conditions that scientists in the physical sciences use. Economists have never been able to do that.

Q. Well, isn't the amount of demand approximately represented by what is sold?

A. Yes.

Q. And disregarding the element of changes, or assuming that there are no changes in the stocks on hand, or stocks in hands of dealers, wouldn't you expect that demand could be approximated, or at least one measure of demand would be the amount shipped during the year by the producers?

A. Well, if your assumptions come to this, that the amount shipped is equal to the amount sold, then that would be a measure of demand?

Q. Well, isn't that a logical assumption, that they ship what they sell and sell what they ship?

A. Well, ordinarily, yes, I can see such relationship, that might be true.

Q. And assuming that an industry produces pretty close to what it ships, production is also a measure of the total demand, isn't it?

A. If we assume that what is shipped is what is sold, and that what is produced is shipped, then we bring
43554 the three to the—to mean the same thing, of course.

Q. Well, you have testified that under modern conditions of factory production, high overhead and so on, the tendency is, is it not, to not produce more than can be sold and shipped?

A. There is that tendency, yes. There might be occasions in which the manufacturer would deliberately want to build up supplies, but there is that tendency.

Q. I am speaking of the industry as a whole. Do you agree?

A. You are speaking of industries in general?

Q. No, an industry as a whole.

A. Well, one doesn't like to quibble over points, but one should not generalize that way as to industries as a whole. The automobile industry would have one practice as to building up reserves, and having them high sometimes of the year and low at other times of the year. Another industry would have different practices.

Q. Well, speaking of the cement industry on that particular point, would'nt you expect the cement industry, as you have been given to understand it, as you testified concerning probable reaction on production, one in which the production attempts to approximate the demand?

A. Well, I would think so, but before reaching a final answer I would want to know more about the industry.

43555 Q. Assuming that an industry with the characteristics of the cement industry had increased its production in the year 1936 to 42.7 percent of its capacity compared with only 28.6 percent of its capacity in 1935, what conclusion would you reach as to whether demand were inelastic in those two years?

43556 A. No conclusion whatsoever.

Q. You could not say whether it was elastic or inelastic?

A. It would have no probative value for that question.

Q. What would be lacking in it to enable you to answer on those facts alone?

A. Well, everything is lacking in it, because you are asking about a relationship between price and demand, and you are telling me about something that is quite different than price.

Q. In other words, the price is lacking?

Mr. Bond: Obviously.

Mr. Wooden: Yes.

A. Yes.

Q. If you had the price element then you could express an opinion?

A. No, because then you have another element in there that disturbs the picture, is that you are dealing with a different year, under different market conditions.

43557 One cannot say, Mr. Wooden—

Q. You are always confronted with that.

A. —that, because you have in one year, you had a high price and a certain demand, and in another year you had a low price and a larger demand, one could not come to the conclusion that you, therefore, had elasticity of demand. No economist would ever draw a conclusion of that kind.

Q. Well, you always have these different conditions at different times, don't you?

A. That is why I say it is so extremely difficult to measure the thing statistically.

Q. Now, you say that elasticity is a term that connotes some relation between price and demand; is that right?

A. Yes.

Q. Then, if you had the demand and could compare it with price, then you could give some answer, couldn't you?

Mr. Bond: As to what?

A. If I could exclude all of the other factors?

Q. Well, can't you in considering a principle, a certain principle, exclude other factors? How can you ever arrive at any conclusion unless you do?

A. Well, if you can tell the economists how to do that, in fact, you will have solved the problem that they have been deeply concerned with for a long time as to how to measure this in fact by inductive methods quanti-
43558 tatively,—this phenomenon of elasticity of demand.

Q. Now, Dr. Griffin, suppose that in this industry where we assume that the production increased between 1935 and 1936 from 28.6 percent of the capacity to 42.7 percent of the capacity, that there was no change in price between 1935,—no substantial change in price.
43559 Q. Then, would you say that that indicated an inelastic demand?

A. No, I would not think that indicated inelastic demand. That is a rather common phenomena to see industry selling a larger amount in some years than in other years. The automobile industry, the clothing indus-
43560 try, the shoe industry—that is very common—for an industry to be operating at one percentage of capacity one year and another percentage another year, with no change of price accompanying it.

Q. And without any bearing upon whether it has an elastic demand or not?

A. Oh, that fact in itself would not throw light on the elasticity of demand.

Q. Assume that prices had gone down between the two years, then would you conclude that there was an elasticity of demand?

A. No.

Q. Well, how do you conclude, as an economist, in any set of circumstances whether there is elasticity of demand, or not?

A. An economist has to rely there, as I believe I did in

my direct testimony, on the observed characteristics of the industry. In other words, it is deductive reasoning, if you please, from the observed facts of the industry. For example, the fact that a product is used commonly in conjunction with other products, that factor tends to give it inelastic demand. One can also—one could also observe the effect of different prices tried in markets that appeared to be identical, say by the same seller operating in two different markets where he followed one price policy in one, one in the other, trying to keep all the other factors constant, it is conceivable he might experiment
43561 that way in an effort to determine elasticity of demand, but there is no very satisfactory way, certainly nothing less of—nothing short of a very complicated statistical study which would throw any light on the elasticity of demand from the study of different,—of prices at different times.

Q. Well, do you mean to say that when any commodity is used in conjunction with some other commodity, that the demand is inelastic?

A. That depends upon—and here I am generalizing, of course; I cannot hope to have in mind all of the details that might exist concerning every conceivable price
43562 in the world—but generally that depends upon the relative importance of the product in the combined product that is to be supplied.

For example, one might argue that if you assumed that the demand for automobiles is inelastic, then I think one would theoretically conclude that the demand for automobile bodies would be more highly elastic than the demand for, let us say, automobile carburetors or automobile tires, even, because the automobile body is a much larger part of the total thing.

43567 Q. Well, the inelasticity may create, according to your view, such an effect on price that it will affect the consumption of demand for the goods?

A. It is not the inelasticity that creates the effect upon price. If the product is inelastic, then I say that the price will not materially affect the demand, if it is elastic, then the opposite.

Q. Do you see no logical economic basis for the
43568 view that price has an effect upon the elasticity rather than the inelasticity, or elasticity controlling the price?

A. I am honestly at difficulty in answering that question. If you would say, Does price have any effect upon demand?

Q. Yes.

A. Yes, and the more elastic the demand the greater effect the price has and—the less elastic the less effect, that is what elasticity means.

Q. Well, when you are dealing merely with the concept of elasticity, you can't tell, then, whether price has created that elasticity or the inelasticity has created the price?

A. Be quite sure that price does not create the inelasticity.

Q. Affect it, or causative factor?

A. No.

Q. Didn't you just say that it was?

A. No, I have said that price will affect the amount of the demand and that the extent to which it does affect the amount of demand is expressed by this term "elasticity" or "inelasticity." Some demands are responsive to price, and some demands are not, but price does not create the condition of elasticity or inelasticity.

43569 Q. Suppose you were to assume that an industry with the characteristics of the cement industry had operated as low as 23.5 percent of its capacity in 1933, and as high as 76.1 percent of its capacity in 1927—

A. Twenty-seven?

Q. Yes. Would you say that those facts had any indication of the elasticity or inelasticity of demand?

A. No, sir.

43574 A. No, they would have no bearing on elasticity or inelasticity. They would suggest to an economist that there was a variability in demand which, as I pointed out in my original definition, should be distinguished from elasticity.

Trial Examiner Norwood: Well, what does elasticity, then mean?

The Witness: Elasticity of demand is, means, the relationship which exists between price and demand, 43575 the effect which price will have upon demand.

By Mr. Wooden:

Q. Would you say that a 9-year period is too short a time to measure elasticity of demand as distinguished from variability or expansibility?

Mr. Bond: Now, if Your Honor please, we have had two questions taking specific years and contrasting them. The witness has said just why you cannot use those as a measure. Now, he is taking another period. I think it is clear to all of us what elasticity means. It does not seem clear to Mr. Wooden yet,—still persisting in these questions; if the demand was different in one year from the demand in another year, wouldn't you say it was inelastic? We have had that question over and over and over.

Mr. Wooden: No. I asked him if a 9-year period was sufficient to measure inelasticity as distinguished from variability and expansibility.

Trial Examiner Norwood: The objection is overruled. Answer the question.

Mr. Wooden: It is a new question entirely.

A. It is not a question of limitation of time, as I have explained before, Mr. Wooden. There are difficulties that no statisticians that I know of have yet satisfactorily overcome of getting a quantative measure of elas-
43576 ticity of demand. Now, it is because they have not figures extending over a sufficient period of years.

By Mr. Wooden:

Q. Do you think deductive reasoning on the subject is more dependable than such figures as I cited to you?

A. Much more dependable than the figures you have cited me; yes, sir.

Q. And the deductive reasoning would just ignore such figures as I cited to you as being irrelevant on the subject, would they?

A. Deductive reasoning would do so, yes. A most complete inductive study would take those figures into account, but you would have to have a great many other figures to go along with it; that is, the mere fact that the industry—that a particular industry operated 76 capacity in 1927 and 23 percent in 1933, there is certainly nothing unusual about that, and indicates nothing about the elasticity of demand for the product of that industry.

Q. And you say that if the price level did not substantially change between 1933 and 1936, that it would still be logical to conclude that the demand was inelastic even when the production rose from 23.5 percent in 1933 to 42.7 percent of capacity in 1936?

A. And that during that time you said as to price?

Q. Yes, prices remain the same, or practically so.

43577 A. I have answered that question before, Mr. Wooden, that that would not establish elasticity or inelasticity of demand, in my mind, particularly when applied to a manufacturing industry.

Q. And deductive reasoning would ignore that factor in reaching its conclusion?

A. I think I have answered a very similar question to that before, too, that deductive reasoning, perhaps, would leave that out; a complete analysis in an attempt to get at this result would consider the whole history of an industry with all of the facts that you could get together concerning it.

Q. Don't you recognize that the inductive method has been considered the scientific method and the deductive method less scientific?

A. Not in the field of economics, and there is not such a sharp line of distinction between the two methods as the question would seem to imply. Economists rarely argue the question nowadays as to the relative merits of those two methods, because economists use all the methods that are at their disposal and seem to be appropriate for solution of the particular problem.

Q. In other words, a combination of the two has to be used in all sound approach to any subject?

A. Where it seems feasible and promises results.

Q. Referring to your testimony on page 42954, 43578 you testified, lines 18 to 22, that you regarded the method of selling described to you in the long hypothetical question of Mr. Bond, that you regarded that method of selling as a natural and reasonable method of marketing in such an industry. Now, I am asking you whether you intended by that testimony to express the opinion that it was the natural and reasonable method of marketing in the industry or merely that it might be or could be?

A. Well, I forget whether I used one article or another, whether I said "A" or "the," but the intent of my statement was that this method considered particularly,—multiple basing point method of marketing,—was a natural method of marketing to expect for an industry having these characteristics.

Q. And also reasonable?

A. Did I use the word "reasonable"?

Q. Yes, sir. It was in the question. You answered it in the affirmative.

A. Yes, that is all right.

Q. Then, you were, as I take it, intending to express the opinion that this method of marketing was not the expression of any collusion but merely of natural factors?

A. The statement as made would not be open to that interpretation. I would, however, since you press the point, be willing to say this, that the existence of that type of marketing method is, to my mind, naturally consistent with the operation of competitive forces and that I
43579 would think it unlikely that a method of marketing of that kind, existing over a considerable period of time, which I believe was assumed, or if it was not assumed I will make the assumption now, having existed over some time, covering the country pretty generally, involving as many different producers as are involved, I would find it difficult to believe that that method of marketing could exist mainly, and I emphasize "mainly" as a result of agreements among the different sellers.

Q. Do you also recognize—

Mr. Bond: Did you finish?

A. I would like to add that viewing it as an economist, and with the basis of assumptions that we have made, it is conceivable that there might have been points at which the operation of the method was implemented, facilitated, by agreements, but relying upon what we know, the history of other industries and the difficulties that business men have in adhering to or getting all of the members of their trade to adhere to some code of practice, it would be difficult for me to believe that a method which it is assumed is generally used over such a large area, such a large number of people, could result merely from such agreements.

Q. Do you now conceive that this method of marketing, as described to you, might, in your opinion, have been the result, at least in part, of collusive arrangements?

43580 A. Yes. I would use the word "might," however, and would like that to refer back to my previous answer. I could not say that it could not—such a method could not conceivably have arisen out of agreement, but I have said in my previous answer that it seems to me that would be a highly improbable explanation.

Trial Examiner Norwood: Or be maintained?

The Witness: Yes, or be maintained. In fact, I would place more emphasis on the "maintained" than the origin, that such a plan could exist year after year with business men as independent as we know American business men generally are, being kept in line merely by the force of an agreement, that would strain my imagination. I would not say that it was inconceivable; it might happen. But it would be difficult for me to accept that.

By Mr. Wooden:

Q. You are not, then, taking direct issue, are you, with the testimony of economists called by Counsel for the Commission, you are simply—they might be right, but you don't think they are; is that right?

43581 A. I recall—I cannot pretend to remember all of the testimony of economists, although I have read it,—but I recall certain testimony,—you may correct me if I am wrong,—to the effect that this method of marketing could not, in the opinion of the economist speaking, have resulted from the normal operation of economic forces. I probably do not have the words exactly correct, but substantially to that effect.

I do decidedly take issue with that. I say that it could very well have resulted from that.

43582 Q. Dr. Griffin, when you testified that you regarded the method of selling cement described in the long hypothetical question of Mr. Bond as a natural and reasonable method of marketing, for what purposes did you regard it as natural and reasonable?

A. I meant that it was a method of marketing that would be natural and reasonable for an economist to expect to emerge for an industry of that kind.

Q. Well, don't you recognize that a thing may be natural and reasonable for one purpose and not natural and reasonable for another?

Mr. Bond: I do not understand the question. Perhaps the witness does.

Trial Examiner Norwood: Do you understand the question?

The Witness: No, I do not.

By Mr. Wooden:

Q. Don't you agree that the purpose has anything to do with the naturalness and reasonableness of an act?

A. In the abstract; yes, sir.

Q. Well, then, for what purpose do you regard this method of marketing as natural and reasonable?

A. I have answered that question, I think, by saying—when I say it is natural and reasonable I mean that it is a natural and reasonable method for an economist
43583 to expect to exist under such circumstances.

Q. Don't you regard it as a natural and reasonable method of marketing for the purpose of producing the results that it does produce?

A. No, I did not have in mind particularly results which it does produce. That implies that there was a purpose in mind in establishing, contriving a method, and that is not my view that I am expressing. I am saying that it is a natural method to emerge from a given set of conditions—circumstances of the industry.

Q. Assuming that it did so emerge, you would regard it, would you not, as a reasonable and natural method—

A. As a reasonable—

Q. —by which the results described to you were obtained?

A. That question does not really have meaning to me.

Q. Well, don't you regard it as a natural and reasonable method of marketing to produce identical delivered prices?

A. You mean do I consider it natural and reasonable to expect that delivered prices—that identical delivered prices will exist under some circumstances,—then my answer is "yes."

Q. Under that method?

A. Well, as to the particular question you are asking me now, I pointed out yesterday at some length under that method, or any other method. It is not a corollary of a method of marketing, assuming the conditions
43584 that we went over yesterday so many times under which you would expect to find identical delivered prices.

Q. You would expect identical delivered prices to be the natural and reasonable result of the method, wouldn't you?

A. I answered precisely that question yesterday.

Trial Examiner Norwood: Answer it again.

A. I said that—if you wish me to repeat it—

Trial Examiner Norwood: Yes.

The Witness: I said that I did not consider identical

delivered prices to be the result of a method. It would be the result of the assumptions which we had made: A group of well-informed buyers dealing with a homogeneous product, and having freedom of choice as to the product which they would buy and the offerings which they would accept. Given that set of assumptions, you would have identical delivered prices, regardless of the method of marketing. And, therefore, if a certain result would follow, regardless of the method of marketing that is used, I do not see how you can say that that result is the—that that situation as to prices results from the method of marketing.

By Mr. Wooden:

Q. In other words, as I understand you, you say there is no connection in your mind between the method of marketing employed in this industry and the results
43585 of that method of marketing?

Mr. Bond: I object. We have spent at least an hour yesterday afternoon on those identical questions.

Trial Examiner Norwood: He may answer this one question.

Answer the question.

The Witness: May I have it read, please?

Trial Examiner Norwood: Read it.

(Question read.)

A. There is no relation between the method of marketing and the results of the method of marketing?

Mr. Wooden: I will reframe the question.

By Mr. Wooden:

Q. You say that there is no connection in your mind between the method of marketing employed in the industry and identical delivered prices?

Mr. Bond: I object. That is the same question.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Objection sustained.

43588 Q. Are not some of the important conflicts of self-interest eliminated by this method of marketing?

A. I would not say that they would be eliminated. The self-interest, some of it conflicting and some otherwise, given free play, gives rise to this method of marketing.

43590 Q. And this method does, does it not, tend to remove the advantages and disadvantages of the vari-

ous mills of the same desfination so far as their cost of transportation is concerned?

A. I do not see that it affects their costs of transportation.

Q. So far as their cost of transportation affects their delivered price, if you want it any more clearly

43591 A. I think we were all over that in the testimony yesterday afternoon, but if you wish I will cover it again.

A mill which finds itself disadvantageously located relative to market—bearing in mind that there are other forms of disadvantageous location, but referring now to just this one—a mill that finds itself disadvantageously located relative to market would find that disadvantage reduced by this method of marketing as compared with some alternative methods of marketing.

By Mr. Wooden:

Q. All right. Take it the other way around.

The Witness: I would like to put this on all fours with the answer I gave yesterday, and I would like to add that that does not have the effect of converting a disadvantage of location into an advantage of location, and it does

43592 not change the relative advantages and disadvantages, except perhaps to minimize a disadvantage. I mean, it does not reverse. Putting it in practical—

Trial Examiner Norwood: It entirely eradicates the effect of them, does it not?

The Witness: No, sir.

By Mr. Wooden:

Q. Does it neutralize them?

A. No, sir.

If we assume that, then, Your Honor, we would assume that under this method of marketing a mill could as reasonably locate itself disadvantageously relative to a market as advantageously.

Now, we can hardly conceive under this method of marketing any mill deliberately locating itself poorly relative to a market. All we can say is that if it does now find itself poorly located relative to market, then this method would tend to reduce that disadvantage, as compared with the uniform f.o.b. mill plan.

Trial Examiner Norwood: That is sufficient to enable it to exist but not to enable it to make as much money as the other mill could: is that right?

The Witness: Well, it would be a factor favorable to its continued existence. But I would refer back to some of my
43593 direct testimony, that there are much more important factors that make for the continuance of mills in an industry of high capital investment than that. In fact, mills pass out of existence very slowly and with great difficulty when there is a large fixed investment, regardless of the method of marketing that is used.

By Mr. Wooden:

Q. Well, Dr. Griffin, wouldn't you say that if a new mill were coming into the industry and acquainted itself with the method of marketing employed in the industry that it could afford to be a little more careless as to whether its mill were located well with regard to its markets?

A. It never pays a business man to be careless under this method or any other.

Q. Wouldn't he be protected against the results of his carelessness if he were careless?

A. Perhaps the penalty would not be so great as in the other, but I can't imagine any person investing the amount of money necessary to put up a cement mill would deliberately disregard the advantage of location—no, I do not mean that he would necessarily try to locate his plant most advantageously relative to market. He has two factors to take into account, advantageous location from point of view of cost of production and advantageous location relative to the market.

Now, in weighing those two factors he would presumably
43594 take into account the method of marketing that exists, and under this method of marketing it seems to me he is more likely to take into account both of these things, that is, the best location relative to cost of production as well as the best location relative to market than he would under some alternative plans.

Q. Well, under any conceivable plan those two factors should be taken into account by anybody who is going into the industry, shouldn't they?

A. Yes, under any conceivable plan they would be taken into account, I suppose; but in the—refer for the moment to the uniform f. o. b. plan, the manufacturer would start with this assumption, that this market close to my—that in this market close to my mill I have a very decided advantage—

Q. Because of what?

A. Because of the nearness to market, and therefore—

Q. Natural advantage of location?

Mr. Bond: Let him finish.

Trial Examiner Norwood: Let him finish.

Go ahead.

A. (Continuing.) —and, therefore, the mill would consider, or the company would consider primarily, I think, this matter of location relative to market; that is, such a location as would make itself the sole seller in a certain market, would give more weight to that and less weight to the factor of costs of production.

43595 By Mr. Wooden:

Q. And, of course, some mills might be very fortunately located with regard to both?

A. Oh, it is conceivable that you can get that combination of the stars that will bring you close to your raw materials, close to your labor supply, close to your power, and close to your market. It does not happen in most industries. Very often you have to balance considerations of that kind.

Q. Now, when you spoke on page 42995 of a base mill changing its method of marketing, I take it you meant change it to a uniform f. o. b. method?

43596 A. Yes. The question asked for that, and that is what I was referring to.

By Mr. Wooden:

Q. And such a mill under such circumstances would presumably increase the volume of its local sales?

A. That is problematical. If he continued to sell at the same price in his local market that he had previously been charging in his local market, he would not increase—I would think he would not increase his sales in the local market. It would merely have the effect that he would lose the freight absorbing sales.

Q. You assumed, however, that he would reduce his price, didn't you?

A. No. I made that as a second possibility—

Q. Yes.

A. —that if at the same time that he changed the method of marketing he also reduced the price, then he might conceivably exclude some distant sellers, and so on. So I do not assume that merely because he did change his method that he would reduce his price in his home market.

Q. Well, he could not exclude any others unless he did.

A. I do not see—strictly speaking, he can't exclude the others anyway. All he can do is make it less profitable for them and discourage them from invading this mar-
43597 ket. Of course, he could exclude them by collusion, agreement; they could agree not to sell in one another's market.

Q. He could also exclude them by making the price so low that they would not be attracted at all.

A. Well, it would be extremely difficult to do that, because under those circumstances the local mill—I have got to consider this home market as the main market, and that it would have presumably in mind primarily its average costs of production.

The distant mill, on the other hand, is regarding this market—regarding the prices in this market relative to its out-of-pocket costs. And if we say that the local mill is going to be able to drop its regular price low enough to exclude any possible freight-absorbing sales by another mill it seems to me the result that one might anticipate would be bankruptcy on the part of the mill that attempted to do that.

Q. In other words, it amounts to this, does it not, Doctor, that the conclusion that under the uniform f. o. b. mill method outside mills would be kept out of the local mills' territory assumes that their costs are approximately the same?

A. Under the uniform f. o. b. mill?

Q. The assumption that under that method the outside mills would be kept out of the local mills' own market assumes that their costs are approximately the same?

A. Oh, no.

43598 Q. Well, by saying that the costs of the outside mill might permit it to still come into the mill base mill's territory, didn't you mean that they were operating on different costs?

A. No.

Mr. Porter: Your Honor, may I ask Mr. Wooden if the question was operating on a uniform f. o. b. plan, or—

Trial Examiner Norwood: I do not think it is necessary to ask him any questions.

Go ahead.

The Witness: The assumption of the question was that a certain mill changes its method of marketing and does not assume that the other mills also changed their methods of marketing.

Now, there were two or three questions asked: One, whether under a uniform f. o. b. plan, to conclude that mills are going to stay out of one another's areas
43599 would require that they all had the same costs—I believe that was one question. Is that the one you are—

By Mr. Wooden:

Q. Substantially that is one of them.

A. Under a uniform f. o. b. plan you would not need to assume that all mills had the same costs in order to assume that they were going to stay out of one another's territory.

Q. Well, you would have to assume that they would not express their difference in cost in terms of price, wouldn't you?

A. Not at all. It simply means that if they did have different costs, and they did express them in terms of price, as you say, or for whatever reason decided to change their base price, they would then change—they would then move over, so to speak, from the left over to the right, the dividing line between the two markets. But you would not have the one mill selling in the other mill's market whether the costs were the same or whether they were different.

Q. Well, the lower cost on the part of an outside mill under that set-up would permit it, would it not, to continue trade and business right in the other local mill's own territory?

A. Let us see if we understand one another. You are talking about a uniform f. o. b. mill plan—

Q. Yes.

A. No deviations from it, and you are asking me whether a distant mill having a lower cost could not
43600 therefore sell over into the market of another mill.

Q. A higher cost.

A. My answer is no, they could not sell over in the other market. They could, if their costs were sufficiently low, make the second mill contract its market and expand their own, thus not having two mills selling in the same market.

Q. But, of course, wouldn't they be selling in the same market up to the point when the first mill decided to contract its market?

A. No.

Q. What would force it to contract its market?

A. It does not deliberately contract the size of the

market. The price made at the mill plus the cost of transportation and the price made at the competing mill plus its cost of transportation, those factors taken together would have the effect of creating a dividing line between these two markets. In one market mill "A" would sell, and in the other market mill "B" would sell. I pointed out in direct that that does not mean that they are competing. They are—they are competing to get as large an area as possible, but they are not operating in the same market.

Q. As I understand you, anyway, a lower cost on the part of the outside mill would permit it, at any rate, to force the home mill to contract its market area?

A. Well, it would have the effect of contracting
43601 the home mill's market area—that is, the low cost—providing the low cost is merely one factor the mill would take into account. Cost might enable them to make a low price. It would be the relative prices that would be important, not the costs.

Q. That would be really one good point about it from the standpoint of the consumer, wouldn't it?

A. Now you are asking me the question of public interest, which I went into at very great length—

Q. I mean the consumers in that particular area who were affected by this forced contraction of the home market by the lower cost mill coming into it.

A. No, sir; I do not think so. The people operating within—the consumers who are in this contracted market, the consumers right near the mill, are buying at the same price as they bought before, with this difference: Now there is one mill where they can profitably buy instead of several. And under those circumstances I would expect that that one mill would act rather arbitrarily as to matters of service and all the trade relations that business men consider important.

Q. But in the territory from which it had retreated in contracting its trade area the consumers there would have a lower price, wouldn't they?

A. No, I do not think so, because if we—you assume now that we have mill "A" and mill "B," and mill "B" has lower costs of production than mill "A"; is that right?

43602 Q. That is right.

A. And that consistent with those lower costs they make lower prices.

Q. That is right.

A. Now, making that same assumption and considering two different methods of marketing, you are going to have the same pattern of prices existing in all the points lying between "A" and "B" under one method as you would have under the other method.

Q. But you would not have the same level of price?

A. Yes.

Q. Didn't you just say—assuming that mill "B" undersells mill "A" and forces it to contract its territory, you say the base price would be higher.

A. That was on the assumption that you had a change in price, that it changed from one price to another, but that would—If under the uniform f. o. b. plan the mill does reduce its price—

Q. By reason of lower price.

A. —or for whatever reason, does reduce its mill price, then in the territory in which it is now making the delivered price by virtue of cost—price at the mill and cost of transportation—those prices would be the same under those assumptions, whether we are using one method of marketing or another.

Q. You mean the same level?

43063 A. The same level. The only difference would be—

Q. It would be lower than it was before; isn't that right?

A. Lower than it was before by virtue of the fact that they decided to lower the price.

Q. What do you mean by the same level? That is ambiguous.

A. Same level; same level under one method of marketing as would exist under the other method of marketing. The level would change if mill "B" in this case lowered its price, yes.

Q. What you are trying to say is the level of price would remain the same even though the price was lower than it was before. You did not mean that.

A. Obviously not. I do not think I said that.

43064 Q. Well, on 42996, lines 7 to 12, you said: "I think it would be most profitable for a new mill under those circumstances to accept the prices that were prevailing in the market at the time that the mill was built. In other words, it would accept the position of a non-base mill

and by so doing it realizes upon its natural advantage of location."

A. I think that perhaps in answer to other questions I would qualify that—at least I would like to now—by saying that any mill or any mill owner has to take into account a great number of considerations in deciding whether he wants to operate as a non-base mill or not. But I can see potent arguments for a new mill simply accepting the position—adopting the role of a non-base mill, at least for the time being.

Q. And realizing upon its natural advantage of location, did you have in mind it would be in a position to take advantage of adding fictitious freight—adding more freight to the delivered price than that mill actually incurred?

43605 A. I certainly did not, because I do not think of a mill setting a price under those circumstances as adding freight. A non-base mill is meeting a price that exists. And my reasoning was based upon this: If there is a certain market which is a considerable distance from another mill, and the price of cement is therefore relatively high in that market, that would naturally attract a new mill to come in and sell in that market. Well, I see no reason under the circumstances why should immediately start to cut that price, which was the thing that attracted them there to that market. Now, ultimately they may come to a point—various causes that might lead them to reduce that price, but the initial step would be to sell at the price which was prevailing in the market.

Q. And if they shaded that price by one cent a barrel, would they not be in effect cutting some base mill's base price?

A. No, they are not cutting some base mill's base price.

43606 Q. They are cutting some base mill's delivered price, are they not?

A. By definition you say they are selling at one cent less than the base mill's delivered price. You are drawing a pretty fine line. I am not sure whether that variation of one cent would require the base mill to lower its delivered price. That was your question, was it not?

Q. Yes.

A. You were not referring to the effect on the base mill's base price?

Q. I was referring to the direct effect upon the base delivered price?

A. It would presumably have an effect—well, it is hard to say.

Trial Examiner Norwood: Well, the other mill would have to meet that, wouldn't it—

The Witness: Yes.

Trial Examiner Norwood: —to get the business?

The Witness: Yes, by setting a lower delivered price. But he is asking me now whether it would mean a lower base price.

By Mr. Wooden:

Q. In that particular instance, wouldn't it mean that their base price was shaded one cent?

43607 Mr. Bond: Whose base price?

Mr. Wooden: The base mill.

A. No; their base price is not shaded by one cent.

By Mr. Wooden:

Q. Isn't their mill net shaded by one cent?

A. Their mill net—if they sold in that market at the same price which the price cutter had put in.

Q. Isn't the base price the equivalent of the mill net of a base mill in the territory that that base controls?

A. Well, but by definition they are not controlling here.

Q. Where it is supposed to control, and where it did control before the base mill shaded one cent?

A. No.

Q. Do you understand in this industry, as you understood it from the description given to you, that the mill net of a base mill is its mill base price at the destinations where the sum of its base price plus freight makes the lowest delivered price?

A. Where it does in fact make the lowest delivered price, yes.

43609 Q. I mean by that, Doctor, of course, hasn't he taken less than his base price by one cent in that particular transaction—

A. Yes.

Q. —even though he still maintains his base price everywhere else?

A. Yes.

Q. All right. That is all I wanted to ask.

A. You asked me whether that changed his base price.

Q. In that transaction.

A. It changes the mill net.

Q. Now, when a new mill comes into the industry and decides to be a non-base mill, assuming it is aware of the method of marketing employed in the industry, that new mill is protected, is it not, in the full advantage of its location? Wherever it has an advantage in location isn't it protected against any reduction in price below the lowest sum of base price plus freight?

43610 A. Well, there are some forces that would tend,—if I understand your question correctly,—to make it remain a non-base mill and so to realize upon its advantage of location; but there are certainly some other forces which might make the latter want to control a larger part of its nearby market, and when it did reduce it would become a base mill.

Q. If such non-base mill shades its base price one cent in territory where it has a freight advantage over the base mill, isn't it interfering with the operation of the basing-point system?

A. No, I would not think so. As I said before, I am getting very close to assuming a factual knowledge here. When I attempt to evaluate the one cent, or half cent, or one-tenth, I do not know just where that line would be drawn. But if the mill we are speaking of does reduce the price I would not say it is interfering with the operation of the basing-point method. It is simply making itself a basing point, which is quite consistent with the method.

43613 Q. Referring to your direct testimony on page 42996, lines 17 to 20, didn't you testify there as an economist that the advantage of location was something that applied equally to the seller as to the buyer?

A. Yes. I was not expressing any ethical notion.

Q. Why do you refuse to answer my question when I put it in reverse, when I say it applied equally to buyers as to sellers?

A. You did not ask me that.

Q. I did.

A. I think you asked me whether it belonged to one or to the other. That is a different matter.

Q. You do say it applies equally?

A. Yes. A buyer can locate himself in such a place that he would be close to raw materials. A seller could be ad-

vantageously located relative to market. Those are questions of fact. There is no ethical implication involved.

Q. Do you see anything in the method of marketing employed that tends to deprive a buyer of the advantage of his location when he pays a mill in his own home town a higher mill net than the mill is willing to accept from other buyers in other towns?

A. Well, if the existence of this higher mill net is
43614 due to the fact that he is—that the mill in question is selling to other mills, distant mills, at a lower price—

By Mr. Wooden:

Q. Distant buyers.

A. —distant buyers at a lower price, then I think one might say that the advantage of location of this buyer located near to the mill was affected, but—

Q. Affected adversely?

A. Affected adversely—but that is on the assumption that the mill net which this nearby mill pays, or the price which this nearby mill—nearby consumer pays is higher because of the lower price that this mill is accepting in a distant market.

Now, that goes into a very complicated question as to whether when a seller does dispose of some, let us say, surplus product in a distant market at a lower price than he is receiving at home, does that thereby force or tend to cause a higher price in the home market, and I do not think that you can generally say that it does cause a higher price in the home market.

43615 Q. Dr. Griffin, on page 42998 of the record, you testified that the method of marketing clearly has an effect upon the form of competition. As a matter of fact, isn't the method of marketing the form of competition?

A. Well, it might be a hair-splitting—strike that.

No, I do not think the method of marketing is the form of competition. I referred to the effect that competitive forces work themselves out differently, the mechanism is different under different methods of marketing.

Q. Well, what effect on the form of competition did you have in mind in saying that the method of marketing clearly had an effect on the form?

A. I think I explained that at considerable length in the direct testimony, but I had in mind that under a basing-point method there were certain ways in which competitive

pressure upon individual business men operated, that
43616 under the uniform f.o.b. plan there would be other ways in which competitive pressure operated upon the business man.

Q. What effect upon form of competition as distinguished from effect on the substance does this method of marketing employed in the cement industry have?

A. I do not think it has the effect of—well, you are asking about the effect on the form of competition as distinguished from the degree or effectiveness of competition. Is that your question, sir?

Q. I am asking what you mean when you said it clearly had an effect upon the form of competition.

A. Well, my previous answer was directed to that. I can go into it more completely if you would like, that in the case of the uniform—

Q. No. I am talking about this method of marketing that we are dealing with in this case, not some other method of marketing.

A. All right. In this method of marketing the competition, that is, the competitive pressure that is placed upon each individual business man, is in the fact that each mill has a desire to retain as large,—retain for itself as large a proportion of the business in its nearby territory and to discourage invaders of that territory by contrast with another situation, another method of marketing, in which the competitive pressure would be in the desire of
43617 each mill to keep as large a market as possible exclusively for itself. There were some other ways in which the competitive forces worked that were covered in the direct, but I will not take the time to go into them now.

Q. Do you consider that a matter of form rather than substance?

A. Yes. That is a matter of the form of, in which—the way in which competitive forces work themselves out under a particular method of marketing.

Q. Would you consider it a matter of form where the method is related to identity in delivered prices?

A. Well, I have said several times that I do not think that the method of marketing is related to the question of identity of delivered prices, if we make the assumptions which we have made several times as to buyers being well informed and having freedom of choice, and so on.

Q. Then, I understand that you do not think there is

any relation between the basing-point system as described to you in the long hypothetical question and the identity of delivered prices?

A. That question has been asked of me several
43618 times, sir, and my answer is that I think there is no relation between them because the identity of delivered prices grows out of factors other than the particular methods of marketing which we are discussing.

By Mr. Wooden:

Q. Can you give any other examples of what you had in mind as an effect of this method of marketing on form of competition as distinguished from substance?

A. Well, I had in mind that competitive forces under this method of marketing work themselves out at, or made themselves felt at each individual selling point, rising from the fact that there were a number of sellers vieing for the patronage of buyers at each individual selling point.

43620 Q. Did you say when you referred to the form of competition, did you mean to say that this method had no effect upon the substance of competition viewed from the nature or kind of the competition as distinguished from degree?

The Witness: Will you read the question?

Trial Examiner Norwood: Read it.

(Question read.)

A. No. A statement relative to form would not imply a statement concerning the degree of competition. I think, however, in connection with the same statement I said that the—that while this method obviously had an effect upon the form of competition I did not believe that it did have an effect upon the, at least a deleterious effect upon the degree or effectiveness of competition.

42621 Q. Now, referring further to your testimony on page 42998, I would be glad if you could look at it, Doctor. Do you have a copy available?

(Mr. Bond hands copy of transcript to the witness.)

Q. You answered the question—

A. May I read it first, please?

Q. Oh, yes. The first question that is answered.

(The witness is reading.)

Q. Are you ready?

A. I think I have the answer.

Q. Now, you first answered the question, as an un-

qualified—in the unqualified negative, the question
43622 being whether you considered the method of selling described in the long hypothetical question restricts competition in price. You said no. Then you proceeded to give reasons for your answer, the first being that there was not any logical distinction between price competition and other kinds of competition; that is right, isn't it,—and then directing yourself to the price side of the equation you said it was not possible to generalize as applied to all possible situations. Well, when you made the answer "no" to the question, didn't you make a generalization?

A. Why, I was there, I think, referring to the effect of the plan as a whole upon the degree of competition in the industry. Now, in the second instance, where I said one could not generalize, there might be particular situations in which one form of competition would give more effective price competition than another, as I was turning my attention to all of the individual detailed cases that one could not say positively that there would be no place in which the effectiveness of price competition would be affected, but my first answer referred to the general degree of competition for the industry as a whole.

Q. In other words, you did intend to generalize?

A. I think my answer explains itself, that the first one applies to the situation as a whole. When I said I could not generalize, I meant that I could not give an answer which was going to be applied to every individual situation, and be sure that that answer would always be the same.

43623 Q. You intended then, I take it, as you went on to qualify your general negative answer?

A. In the way that I have described. It is like asking whether in general, whether—asking the question of whether dogs have four legs, and I would say "yes," dogs have four legs, and then I might continue to say that of course one cannot generalize with assurance, that there are perhaps instances of three-legged dogs and five-legged dogs.

Q. Get a leg cut off now and then?

A. Maybe.

Q. Well, you went on to explain your answer on that page 42998 by pointing out the possibility of competition within the method of marketing itself; isn't that correct?

A. The answer discussed the form of competition under two alternative plans, one being this one and the other the uniform f.o.b. plan.

Q. Well, when you proceeded to point out the possibilities of competition within this present plan, or method of marketing, you were answering Mr. Bond's question, were you not, as though he had asked you whether it eliminated competition in price, whereas he did ask you whether it restricted competition in price?

A. I believe I indicated that, comparing the two forms of competition, that there was no basis in my judgment for believing that the present form brought any less
43624 effective competition than the alternative form which I was considering, and therefore, did not restrict it by comparison with the alternative plan.

Q. But without comparing an alternative plan, did you intend to say it did not restrict competition in price within the industry as it operated under the present plan?

A. Well, I have difficulty in considering the question of whether some method of marketing restricts competition unless I compare it with something else. It could restrict competition by comparison with something that had existed at an earlier time, or it could restrict competition by comparison with some conceivable alternative, but just to say that it restricts competition relative to nothing—in other words, to restrict is a relative term.

Q. In other words, you would see no basis on which to decide whether it restricts competition within the scope of the system itself as presently used?

A. No, considering the fact of this industry as assumed, then I see no reason for thinking that this method restricts competition.

Trial Examiner Norwood: As distinguished from what it would be without it?

The Witness: As distinguished from what it would be with any other alternative.

By Mr. Wooden:

43625 Q. Now, you agree, do you not, that a base mill has a big advantage in its home market because of its nearness to that home market?

Mr. Bond: Advantage over what?

Mr. Wooden: Over competitors located at a distance.

A. Advantage in what respect?

By Mr. Wooden:

Q. Can you think of any respects in which it has? You said this morning that it did have a big advantage, as I understood.

A. Oh, yes. I could think of some, but I would like to know what you had in mind.

Q. One of the chief respects is the substantial advantage, isn't it, in cost of transportation from his mill to the customer?

A. That would be one respect, yes. In that respect the nearby mill, other things being equal as to cost of production between this mill and competitor's nearby mill, has an advantage over a distant mill, of course.

Q. Do you see any reason why that advantage would be lessened in any way if that base mill were to increase its price and its distant competitors matched the delivered price?

A. Yes, I do.

Q. Wouldn't their relative position be just what it was before?

A. No, not in my opinion.

8626 Q. All right. Explain it.

A. Because obviously there is a limit to the amount of freight absorption that mills will undertake. No mill likes to absorb freight. Now, as you raised your price it becomes less. It is necessary for the distant mill to absorb less of freight than it did before. That will have the effect of bringing in to this home market as competitors some mills who had not previously thought it worth while to sell in that territory, and then there are other mills who are now selling in that territory in a desultory sort of way who would be—who in view of the higher base price would find it profitable to extend their effort in selling and increase their sales in that market.

Q. But the base mill would have that substantial advantage in nearness to the costumer just as it had before, wouldn't it—that would not have affected by the change in price?

A. Yes, that would have been affected by the change in price, because the base price plus the freight determines what he can quote, and any advantage that he had before from nearness resulted from his price plus the freight to

that point, so if he raises his price that advantage is reduced.

Q. But if others match that raise, as they are supposed to do, aren't they, under the basing-point system?

A. Oh, I don't know what you mean by "supposed."

Mr. Bond: If Your Honor, please, that is purely a factual question, to ask him if the other mills are
43627 supposed to raise their prices.

Trial Examiner Norwood: I think he testified about this system, here; if that is one of the features he can tell us.

Mr. Bond: That is a factual question.

Mr. Wooden: Perhaps I should not have said "supposed."

Trial Examiner Norwood: The objection is overruled.

By Mr. Wooden:

Q. Did you understand the normal working of the basing-point system, that when a base mill increases its price that distant mills selling in that base mill's territory will increase their prices also?

Mr. Bond: It is still factual.

Trial Examiner Norwood: The objection is overruled.

A. Well, if the base mill raises its price and not so much so that it ceases to be the controlling mill in a certain market, if it raises its price to meet the higher delivered price effective within a certain market, then I would expect the distant mill to accept that price, why shouldn't they? It is a higher price than they had been able to obtain before. They were previously accepting, previously selling on freight-absorption basis, and, of course, they would sell at those higher prices.

By Mr. Wooden:

43628 Q. And if it did so, whatever advantage the base mill had in cost of transportation it would still have, wouldn't it?

A. No, because it has restricted the area in which it can realize its maximum mill net, and it has brought more sellers into that market.

Q. It would not do it if the others had followed the advance, would it?

A. Yes.

Q. Do you say that a base mill that raises its price in the

territory that its base controls, and the other mills that sell in that territory match that increase; that that restricts the territory of that base mill?

A. It restricts the territory in which they will receive their maximum mill net.

Q. Will you explain that to us?

A. It seems to me it is clear, by fixing a higher base price, that you are restricting the territory in which your base price plus freight determines the delivered price; and it is within that territory that you——

Q. Unless other mills——

Mr. Bond: Let him finish.

A. ——and it is within that territory that your maximum mill net could be realized. Now, the only way that it would not affect the area in which it could realize its maximum mill net would be to assume that the other mill had
43629 also raised its base price by the same amount as the first one had, and then the dividing point would remain the same.

Q. I am assuming that, dealing with the same territory and same destinations, of course, unless the one base mill meets another base mill's price, the line of territory between them is bound to shift,—no doubt about that,—but I am just talking about the territory in which a given base mill controls a given area as to destination price, that base mill raises its price. Now, other mills selling in that territory, whether base or not, wouldn't you expect them to make the same delivered price on the increased base?

A. Yes, but it would restrict the area in which the base mill can realize its maximum mill net, and it does encourage the distant buyers to sell in that territory, and that presumably has the effect of forcing the mill in question to sell a larger amount of its product in distant markets on a freight-absorbing basis, and the disadvantage of doing that offsets the advantage, or would have to be balanced against the advantage which the base mill would get from raising its price in the nearby territory.

Q. Under the operation of the system as you understand it, would you expect adjoining base mills to raise their base prices if one base mill in adjoining territory raised its?

A. Do you refer to two base mills at substantially the same point of production located in the same town?

43630 Q. No, two base mills, each of which control delivered prices in adjoining territory.

A. Then, if one of them raised its base price, would I expect the other one to raise its base price?

Q. Yes.

A. No, there would be a number of factors that would be concerned in that, but I do not think that you can generalize to say that they would do so.

Q. Unless it did so the territory between them would shift?

A. Might, favorable to the mill that did not join in the raise.

Q. And if they did so the mill that initiated the first raise would have the same advantage in freight over its distant competitors that it had before?

A. You mean if the adjoining base mills did raise their prices by the same amount that it would not affect the relative position of the mills, is that the question?

Q. That is the last question; that is part of the situation, yes.

A. Well, that is rather common in competitive industry, that if all competitors raised their prices by the same amount that the relative position of the competitors is not going to be changed; that is self-evident.

43631 Q. Now, referring to your testimony on page 42999, you say there you do not mean to imply there would be no price competition under the uniform f.o.b. method.

A. Yes.

Q. Do you think there would be?

A. Oh, yes; yes, I would suppose so. I think I made that clear.

Q. And in that case, if the mill raised the price in its—raised its mill price;—

43632 A. Base mill?

Q. No, a mill selling under a uniform mill base, if it raised its price it would restrict the area in which it was dominant, so to speak, unless the outside mills also raised theirs; isn't that true?

A. Correct.

Q. But under that mill base method the only way that mill can keep out outside mills is by making a lower

43633 price than they do; isn't it?

A. Under the uniform f.o.b.?

Q. Yes.

A. Mill plan?

Q. Yes.

A. It seems to me that it is the same question, but I think that that would be true.

Q. So you are comparing here, are you not, a system whereby an increase in base price does not keep competitors out of the market, but under which they match that increase with a method which would keep competitors out of that home market by making lower prices; isn't that right?

Mr. Bond: May I have the first phrase read?

Trial Examiner Norwood: Read it.

(Question read.)

A. Well, I am comparing the method that has a number of aspects. You are selecting just one of them.

By Mr. Wooden:

Q. Yes, confine yourself to those two aspects that I——

A. By comparing a method by which the restraint upon price increase is in the case of the uniform f.o.b. mill method, is the desire to keep one's exclusive market as large as possible, the mill knowing that if it raises its price it is going to restrict the area in which it will be the sole seller; if it lowers its price, other things being equal, it will 43634 increase the area in which it will be the sole seller, and comparing that with a method under which—if the same mill tries to raise its price, it will invite more selling within its own market on the part "A" of distant competitors who had not previously sold at all in that market and "B"—by more intensive efforts on the part of those who had been selling in the markets before, and that these together create the necessity of the home mill selling a larger proportion of its goods in distant markets on a freight-absorbing basis; comparison of those two sets of forces——

Q. But you are comparing on the one hand a situation where the price advance is met by competitors, and with a situation where on the other hand a price advance restricts the area of the home mill.

Trial Examiner Norwood: Is that true?

A. Oh, I suppose that is one way of putting it. It is a very limited aspect of the case.

Q. When you testified on page 43000, line 7, that you did

not think the present method had any necessary effect of restricting competition, what—.

Mr. Bond: Would you finish the sentence?

Mr. Wooden: For my purposes I do not care to.

Trial Examiner Norwood: Go ahead.

Mr. Wooden: He can look at it if he wants to in his answer.

43635 Trial Examiner Norwood: Finish your question.

By Mr. Wooden:

Q. What did you mean by the word "necessary"?

Mr. Bond: May I show the witness—.

Mr. Wooden: Surely.

Trial Examiner Norwood: Yes.

(Mr. Bond hands the transcript to the witness.)

A. Well, I meant that in the nature of the case an economist would not have—would not conclude that there was not inevitable necessary effects of restricting competition, and I added that in my opinion it does not have the effect of restricting competition at all, generally speaking.

By Mr. Wooden:

Q. So you went on to go further than implied by the word "necessary"?

A. Yes.

Q. In your opinion had no effect at all on that sort, generally speaking?

A. Yes, sir.

Q. Now, on the same page, lines 4 and 5, you said which of those two methods—contrasting the present one with the uniform mill base method—which of those two desires to retain a large, as large a proportion of nearby business as possible, would be stronger in any particular case, you did not think it possible to predict. Are you any better able to predict it in general terms than you were in any

43636 particular case?

A. Well, I was simply trying to be very cautious in that statement that one could not say in any particular case. I suppose I should have added, without knowing all of the detailed facts of the particular case which of the two methods would be stronger,—would have the stronger effect.

Q. And yet you are willing to—

A. It is quite possible, I think, if one could take the particular situation and make a field study of it, of markets and locations, he might arrive at a conclusion.

Q. But you are willing to make a generalization although you would not pass judgment on a specific case?

A. I would not pass judgment on a specific case without knowing the particular details of that particular case.

Q. Are you willing to pass judgment on a general situation that is made of a multiplicity of particular cases?

A. I think that an economist is justified in looking at a whole method of marketing and drawing conclusions as to the general effectiveness of that method of marketing even though once he had made that statement he would not want to say that it would necessarily apply to every particular situation. There are numerous examples of that, of course. One could say that one might express an opinion concerning collusion that collusion of business men was not desirable, or does not have the effect of increasing competition.

43637 I think I made that statement, or agreed to that statement yesterday, but one could not conclude from that that there were never any instances in which it might have the opposite effect.

Q. Well, now, passing on to your testimony on page 43009, about wastes of competition, among which you proceeded to discuss cross-hauling. Are there not some wasteful tendencies inherent in collusion and combination as well as in competition?

A. Oh, I think there are a great many.

Q. Name some of them.

A. Oh, tendency to disregard the consumers' interest, as is always true when you have just one seller selling to a particular group of consumers.

Q. Is that wasteful? I am talking about a waste.

A. Forms of waste.

Q. Forms of waste.

A. No, we would not call that a form of waste.

You could, I suppose, call a form of waste that lethargy which sometimes overtakes business men,—we can assume would overtake business men,—when they are free of the spur of competition, so that they would be less careful in the watching of costs, or in the improvement of the product. There is a waste of human energy that might have been more effectively employed under the spur of competition. That would be an example.

43638 Q. Wouldn't you say that monopoly or combination would have a tendency to increase the amount of productive equipment put into the industry?

A. That combination, did you say?

Q. Yes, or collusion.

Mr. Bond: And monopoly, he said.

Q. And monopoly.

A. I do not see why a monopolist, to carry it to the extreme—I do not see why any monopolist would want to unnecessarily increase the amount of productive equipment in an industry.

Q. Doesn't it lead to new competitors coming into an industry where there is collusion or monopoly?

A. Does monopoly lead to competitors, is that the point?

A. Well, let's separate the two, then, if you want to. Take collusive action among different competitive owners, doesn't collusion among competitors tend to induce the entry of new competitors?

A. If the collusion takes the form or has the effect of making the business more profitable, that would tend to bring in more competitors, and that in turn makes the collusion more difficult.

Trial Examiner Norwood: It brings about higher prices, it has that tendency, doesn't it?

The Witness: If the collusion has the effect of bringing about high prices, and thus making the industry 43639 more profitable, it would have the effect of attracting more competitors, which I say makes the maintenance of the collusion more difficult.

By Mr. Wooden:

Q. Wouldn't you say that given those facts, that collusion in the long run tends to produce overcapacity in an industry?

A. Well, if you assume that collusion has the effect of raising the general price level in an industry without corresponding effects upon cost, and that, therefore the industry is more profitable, it would have the effect of bringing more business men into the field, and increasing the total productive capacity.

Q. But you do not think that the existence of collusion can be deduced from the existence of overcapacity or the lack of it?

A. No, I do not think you could do that.

Q. No matter how great the overcapacity?

A. No, it is quite obvious that you have many industries of great overcapacity in which there has never been the slightest suspicion of collusion.

Q. Agriculture, for instance?

A. Yes, I suppose agriculture at times, in some countries at certain times.

Q. Now, passing to the subject of cross-hauling as a waste, wouldn't you say that cross-hauling would
43640 be,—I refer to genuine cross-hauling such as you would be willing to consider as cross-hauling,—wouldn't you say that such cross-hauling would be a natural result from a collusive price-fixing arrangement that stopped short of allocating the business?

A. Your latter assumption makes the question difficult because if you did have, in my opinion—Let me have the question in the exact wording, please.

Trial Examiner Norwood: Yes. Read it.

(Question read.)

A. Well, I think that if a collusive price-fixing arrangement could arrange a plan of that kind, it would be strong enough to bring about the opposite of that; that is, to prevent the cross-hauling.

Q. You mean one that allocated the business? I am trying to find out.

A. One that would bring about a uniform f.o.b. plan commonly called Professor Fetter's plan, it could do that, and I should think they might.

Q. Wouldn't a price-fixing arrangement that did not go so far as to say what mills should ship to certain points and what mills should ship to other points, wouldn't that naturally lead to cross-hauling?

A. No, a collusive arrangement would not have to be as strong as you have said so that they would be able to dictate the mills at which points they would sell, if it
43641 were simply strong enough to say that you shall not practice freight absorption in this industry, then you would have—that is a sort of thing that a group of people colluding might very well do.

Q. Do what?

A. That that is the sort of thing that a group of people in collusion might very well do.

Q. What?

A. Agree that there would be no freight absorption and invasion of one another's market.

Trial Examiner Norwood: He is not asking you about that, Doctor.

Mr. Wooden: No.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Can't you answer that a little more directly without discussing the other feature?

The Witness: No, I do not think that collusion would naturally lead to cross-hauling.

By Mr. Wooden:

Q. Even though the arrangement as to prices was one that involved identical delivered prices?

A. Now, we are back to identical delivered prices. I would say that no arrangement is necessary to bring about identical delivered prices under assumed conditions 43642 of marketing we talked about.

Q. That is not my question, either.

I am asking you to assume the existence of a collusive arrangement under which delivered prices are identical, and ask you if it is not the natural logical result of such arrangement that there be caused cross-hauling?

A. No, I would not think so.

Q. Even when they do not go to the point of allocating the business between mills as to what points they shall ship to?

A. That is right. I do not think the cross-hauling would naturally grow out of collusion.

Q. In other words, you would think this cross-hauling results when there is a regular recurrent passing, hauling of cement from one mill to another mill's location, and vice versa? Do you think that is one of the wastes of competition; is that right?

A. It is a waste of competition; it is a natural expression of the working of forces of competition, in my opinion, in any industry of this kind.

Q. You would not agree that it might be also one of the wastes of collusion?

A. Well, if it came about as the result of collusion it would be still a waste, and therefore a waste of competition, but I still say that would not be brought about by collusion.

Trial Examiner Norwood: You mean brought 43643 about by, whether it was established through collusion or otherwise, would cross-hauling be the result that you would, naturally result?

The Witness: Having this method?

Trial Examiner Norwood: Yes.

The Witness: As it has been described, would I expect to find cross-hauling a part of it? Yes, I would.

By Mr. Wooden:

Q. Assuming the absence of any concerted attempts to determine identical delivered prices, would you expect cross-hauling?

A. Yes, I would expect cross-hauling as the result of the expression of normal economic forces in an industry where there is high overhead costs and a distinction, therefore, between average costs and out-of-pocket costs.

Q. You would expect under conditions of normal competition for cement to be hauled from Des Moines to Kansas City, and during the same period of time cement to be hauled from Kansas City back to Des Moines, would you?

A. Yes, sir. Well, I—if you please, I would not like to testify as to the particular geographic illustration. I do not know the exact number of miles, I do not know the freight rates, and so on, but I think my general answer is adequate.

Q. And you say that although that was a typical condition and not merely an occasional condition in the industry?

A. You mean that cross-hauling—

13644 Q. Yes.

A. —is typical?

Q. Yes, the kind I just described.

A. You mean the degree of these particular cities—

Q. From one mill point to another, and vice versa.

Mr. Porter: You do not mean the distance is typical, Mr. Wooden?

Mr. Wooden: Oh, no.

A. I would rather confine my answer to saying that I think my previous answer would not be affected if I knew that cross-hauling was typical. Now, as to how far and what circumstances, exactly how many miles, freight rates, and so on, I would be unable to testify.

Q. It means nothing to you as an economist that there is a recurrent hauling of the same commodity from one place of production to another place of production, and from that second place of production back to the first on the part of another seller?

Mr. Bond: I object.

A. Do you mean hauling the same product?

13645 Q. Does it have any economic significance—if you want to be technical about it

A. You mean that a product produced at point "A" and is hauled to point "B," and then is shipped back to point "B" again, that is what the question seems to me to read.

Q. Points "A" and "B," both points of production, different sellers.

A. All right.

Q. "A" ships the product to "B," who sells it there, and "B" ships the product from his mill to "A," and sells it there, you do not see any economic significance in it?

A. Oh, yes, there is economic significance in it.

Q. What is it?

A. One thing I would conclude from that that there was a marked distinction between average costs and out-of-pocket costs, but I would also assume that there was a striving for volume, various things I could conclude. I would not conclude collusion between "A" and "B" to do it.

Trial Examiner Norwood: Do you think that 43646 would be the natural operation of economic forces?

The Witness: Yes.

Trial Examiner Norwood: Competition in action.

The Witness: Competition in action in the actual world, I think that is what you would get.

By Mr. Wooden:

Q. Not merely between "A" and "B," but as characteristic of an industry?

A. Yes, quite common in an industry.

Q. I did not ask you whether it was quite common. I asked you another—

A. All right. As characteristic. That does not mean universal. It does not mean that all businesses—

Q. I did not mean that, either. I meant characteristic of an industry.

A. I just wanted to be sure we meant the same thing.

Q. Did you ever hear of the economic expression of carrying coals to New Castle?

A. Yes. I would not say it was an economic expression.

Q. Doesn't that mean just what this cross-hauling,—genuine cross-hauling,—involves?

Mr. Bond: I will leave that question to Your Honor.

A. I do not know just everything that is implied by that literary allusion.

43648 Q. Did I understand you to agree, Dr. Griffin, that the uniform mill base would remove the waste involved in cross-hauling? Is that right?

A. The uniform f. o. b.—

Q. Yes.

A. —mill base method would remove the cross-hauling? Very largely, yes. In fact, almost altogether, except
43649 for the possible—the zone which might exist as between two markets in place of the precise line which sometimes for convenience we have assumed existed.

Q. Can you suggest any factors of increased cost in other respects than would result when the waste of cross-hauling was removed in that way?

A. Yes. I think I mentioned a number of them in direct. If you wish me to take the time to repeat them, I will be glad to go over them again.

Q. Increased cost factors.

A. The fact that you do not have competition at each individual point is likely to lead, I believe, from my observation of industry generally, to a carelessness as to costs as well as to carelessness in serving the consumer according to the consumer's desires.

Q. But haven't you testified that under the uniform mill base plan a manufacturer would have to reduce his price if he wanted to keep others out of his market area? So I am asking you what increased cost would attend that.

A. I think I said in my direct that those increased costs are not predictable in detail. Those of us who believe in the beneficent forces of competition believe that the existence of point-by-point competition does have the desirable effect of keeping producers alert as to all possibilities,
will be to their advantage, and that once you remove
43650 that, whether by arbitrary division of the market, or otherwise, you create a different situation in the industry, and that is likely to show itself in a number of ways, including general lethargy in the industry, which will very likely be reflected in costs.

Q. You are assuming an arbitrary division between market areas, aren't you? What effect on increased costs would it have—

A. I said, sir, whether arbitrary or otherwise.

Q. But you can't specify any particular respect in which the cost will be increased, can you?

A. I have said that the general effect of point-by-point

competition is to maintain an alertness as to all aspects of the business and that that is likely to reflect costs.

Now, it would be difficult to say in advance just what those costs are going to be. There is one respect, I think, in which one might be a bit more definite, as brought out this morning. Under the uniform f. o. b. mill plan I believe that a mill can disregard to a greater extent than it could under the present plan the matter of locating itself so as to secure the lowest cost of production. And in that respect you might over a period of time find a location of mills which was directed entirely to the advantage of location relative to market rather than to costs of production, and that would have its effect upon costs of production. I think over a considerable period of time it might be a substantial factor.

43651 Q. Would there be any direct effect upon the cost of production?

A. That, of course, would have the effect upon the cost of production so that you would—

Q. Decrease the volume?

Mr. Bond: Let him finish.

A. Not necessarily decrease the volume, but the effect upon cost from being less advantageously located relative to the cost factors. And so you might very well find an increased cost of production which would offset the saving that is made in cost of transportation under the uniform f. o. b. plan.

Q. As I understand you, you say that the saving in cost by removing cross-hauling would be more than offset by increased cost in other ways; and I further understand—

A. Could I have my answer where I said that?

Trial Examiner Norwood: Well, let him finish his question, please.

Q. (Continuing.) Then I further understand that increased cost in other ways grows out of your conclusion that there will be less competition.

Mr. Bond: And your question is—

Q. My question is, do I understand you correctly?

A. Well, no. I did not say—I did not express an opinion that an advance in costs to which I referred would be greater. I said it would be offset against the other.

43652 I mean, it must be balanced against the other. No one can say quantitatively.

Q. What about qualitatively?

A. Qualitatively, yes, they would tend to offset one another.

Q. And the qualitative nature of the increased cost would be the result of what you conceive to be a lessened state of competition?

A. No, not entirely.

Q. In part?

A. I pointed out this morning that the uniform f. o. b. plan would tend to have the effect of encouraging mills to locate with reference to markets rather than with reference to cost of production. That is not a question of the degree of competition; it is a question of the freedom of competition, and of the freedom of marketing, if you wish, and it would be that factor that would be significant for this, as to this last point that I made.

Q. That is the combination of factors that determines the best location for the point,—that is, above cost of production and markets?

A. Yes, but the relative importance of those two things is different under the two different methods as I conceive them.

Q. Well, is it true that in part the increased cost that you see resulting under the uniform f. o. b. mill method comes from the assumed lessening of competition?

A. Well, the changing of the nature of competi-
43653 tion, I have conceived that this—that they are very desirable. A common method of competition in the United States is the rivalry of several sellers for selling to the same group of buyers. Now you are proposing to substitute here the rivalry of several sellers who are selling to different groups of buyers.

Q. In part.

A. Except at the dividing line between the markets.

Q. Yes. Do you give the opinion on page 43001, line 2, that the balancing of the costs of cross-hauling on the one side and the advantages of continuous competition on the other,—you do not believe that cross-hauling has the effect of increasing the costs of competition. How are you able to form that opinion when you do not know what the amount of cross-hauling is?

A. Well, I assume that no one knows what the cost of cross-hauling is, and I assume that no one knows what these other costs are which I have put on the other side of the ledger. So it is my judgment, considering what would

appear to an economist to be the cost of advantages on the two sides, that there is no reason for assuming that this cost of cross-hauling would be greater than the other costs, and I would not come to the conclusion that it was.

Q. But you would come to the conclusion that it was not?

A. That would be my opinion, but I must confess that I could not give quantitative evidence of a statistical nature to substantiate it, for the reasons that I have indicated.

43654 Q. In other words, on the quantitative side you do not have any basis for your opinion, and on the qualitative side your opinion rests upon the conclusion that one is a competitive method and the other is less competitive?

A. Oh, no, I would not say that one is less competitive than the other. I have corrected that several times. There are different forms of competition.

43655 Q. Now, Dr. Griffin, referring to your testimony on page 43002, where you said that the rivalry between sellers would have the effect of keeping prices down to a reasonable correspondence with costs, do you mean to say the rivalry that is not rivalry as to price would have the effect of keeping prices down to a reasonable correspondence with costs?

A. Well, in one way I would go back to the distinction—the point that I have made, that all of this competition is fundamentally price competition, but in—I suppose one would have to say that competition that did not involve price, that is, the value of what is given for what is charged, would—if it did not involve that, it would not have the effect upon costs and the correspondence of costs to prices.

Q. When you spoke of the self-restraint of sellers, on page 43004, line 19, can it be determined, in your judgment, by an economist from the mere fact of self-restraint whether it is individual and independent or reciprocal in its nature?

43656 A. Why, I do not think one can generalize about that completely, but there are many instances certainly in which the self-restraint to which I was referring might lead to certain actions, and an agreement would lead to the same actions, so that one could not be sure.

Q. Could not be sure which?

A. One could not be sure wether the agreement were present or not.

Q. Now, on page 43005 you drew a distinction, did you not, between manufacturing industries with capital investments and overhead and out-of-pocket costs as distinguished from industries that did not have such factors.

A. I think I made such a distinction. There are almost no industries that do not have some element of overhead. It is a matter of degree.

Q. As a matter of fact, even the farmer has capital investment and overhead and out-of-pocket costs, hasn't he?

A. Yes, he has them, but he does not ordinarily think of them. That is, he does not take them consciously into account in determining decisions as to the prices that he will charge for his products, because the market situation, environment in which he is working, does not make it necessary for him to do so.

Q. When you testified on page 43005 that without self-restraint on the part of individual sellers you would expect prices to be carried to a point belong the cost of
43657 production, did you mean by that that unless delivered prices were identical that that would happen?

Mr. Bond: If you do not mind my adding that this refers to manufacturing industries which have overhead costs.

Mr. Wooden: That is right.

A. No, I did not particularly have in mind that, and I did not intend to say that. I should not have said that it would always lead to that so-called ruinous competition, but in a situation in which capacity exceeded the readily available demand, that combined with overhead and an absence of individual self-restraint would very likely lead to that result.

By Mr. Wooden:

Q. You did not mean, then, that unless that self-restraint extended to the point of maintaining identical delivered prices that prices would be carried to a point belong the costs of production?

A. Now we are back to the same point again, that I do not concede, that self-restraint is required on the part of the business men to bring about identity of delivered prices under the market conditions that I have described

so many times. That arises out of the free choice of the buyers, not out of anything that the sellers may do.

Q. Do you mean to say, Doctor, that this identity of delivered price is something that buyers are re-
43658 sponsible for and the sellers do not have anything to do with?

A. Well, every time I used the expression I inserted the word that sometimes that is effective price; that effective price is a price that is actually paid. Of course, there is nothing—

Trial Examiner Norwood: Now, does that answer the question?

Read the question.

(Question read.)

Trial Examiner Norwood: Now, state if it is what you mean or if it is not what you mean.

The Witness: The identity of effective prices, I mean by that the prices that are actually paid, I believe arises more out of the self-interest of the buyers and their freedom of choice and their information about the market than it does out of anything that the sellers can do.

By Mr. Wooden:

Q. When you talk about the effective prices you mean delivered prices?

A. Prices actually paid, I mean.

Q. Do you mean delivered prices?

A. Yes, at the place where the market is,—the goods are. Of course, we have to be talking about a particular market.

Q. Well, do you hold the buyers responsible for the effective prices paid at destination in this indus-
43659 try and think the sellers have nothing to do with it?

Oh, I would not say that they had nothing to do with whether the prices were high or low. That is another matter. We are talking about—understood that we were talking about the fact that in a market where buyers have free choice that one price is going to come to prevail in that market.

Q. In other words, the buyer is responsible for the identity of the delivered price?

A. I think that is all that one really needs to assume to deduce that you are going to have identity of effective prices.

Q. And you do not think the sellers are responsible for the identity of delivered prices?

A. They might be responsible for an identity of some—of asking prices, but as to the prices which are actually paid in a given market, if you have several sellers making offers of a homogeneous product, and the buyers are free to chose between these alternative sources of supply and are free to chose between these alternative sources of supply and are well informed, then I should say that the prices would have to be—the prices actually paid—would have to be uniform in that market, except, of course—I did not want to clutter the record by putting in all the possible deviations—except at a time when a price is being changed. That is, one seller might come in and offer a lower price, and in the instant or the short period of time which would be required before the buyers become informed of the fact that there was this lower price, 43660 then there might be a difference but there would be a strong tendency to uniformity.

Q. Would your answer be affected if you were to assume that it is a common practice in the industry for dealers simply to order cement without asking what the price is?

A. Well, I would not think that they would do that for any considerable period of time unless they found that they were getting the benefit of the lowest going price. Anyway, I can conceive that. They might have sufficient confidence in any manufacturer. Maybe the custom of the trade is so well established that I can call him up and say, "Send me a pound of beef steak"; in the case of a retailer, or "Send me 10 pounds of sugar." And I expect I would get the going price on sugar. I do not know what particular situation you are referring to, but that seems to me is conceivable.

Q. Wouldn't that suggest to you as an economist that the dealers who placed orders in that way pretty well understood that prices delivered from whatever manufacturer would be the same?

A. I think it would not be unreasonable for them to expect that, because any manufacturer, I suppose—or let us go back to our grocer illustration: Any grocer who made a practice of charging a higher price than competitors would very soon lose business, and I could rely upon that fact with a reasonable degree of assurance that I was going to get the market price for the product.

Q. The dealers in such case would not be bargaining with the manufacturers at all, would they, as to price?

A. Yes, they are bargaining, in this sense, that any manufacturer would know, I suppose, that if he did take advantage of that possibility that he is going to lose trade right promptly by doing so as soon as the buyer discovers it. I do not think it is necessary in order to thing of people bargaining that they must actually go down and compare all of the prices in all of the retail stores on a particular day. The fact that the retailer knows that they are going to favor the seller who gives them the lower prices constitutes itself competitive pressure upon that retailer.

Trial Examiner Nolwood: Well, you would not speak of them as informed buyers. This is a case where faith takes the place of information, is it?

The Witness: Well, I would assume that they would not go on very long acting merely on faith; that they would wake up sooner or later if some manufacturer were customarily charging them higher prices. If they did not, they would probably go out of business.

By Mr. Wooden:

Q. But they would not need to wake up if experience demonstrated that the delivered prices were all the same?

A. Now we are going around in a circle. The reason that delivered prices are the same is that the manufacturer knows that he is going—that any deviation is going to be observed.

43662

Q. When you spoke on page 43005, talking about prices being carried below the costs of production, you meant merely there, didn't you, that they were being carried below somebody's cost of production and not everybody's?

Mr. Bond: May I show him—

The Witness: May I see the testimony?

(Mr. Bond hands record to the witness.)

A. No, I was not at that point specifying. I do not think it was necessary for the particular point that I was making. It might refer to some business man's costs of production, and that it had merely brought it down—had merely reduced the margin of profit, or it might mean it went below all business men's cost of production.

By Mr. Wooden:

Q. Well, I am asking you what you meant when you said that, whether you meant somebody's or everybody's.

A. I think I indicated in my answer that I was not distinguishing at that particular point, and I do not think that at that point it was necessary to do so.

Q. Well, I am asking you to distinguish now as to what you meant.

A. Well, I think, if you insist on specifying, that it would have to be the costs of production of a substantial
part of the producers not merely of one producer.
43663 Q. That would not force anybody out of existence whose output was needed to supply the demand, would it?

A. Yes, I should think that it might do so, as to supply the demand over a period of time.

Q. Doesn't economic theory of competition presuppose that some concerns will be driven out of business if their costs of production are higher than the cost of those whose output is necessary to supply the demand?

A. Yes.

Q. Now—

A. I must say that in a realistic view of business that the companies—industries having large capital investments, one cannot expect that businesses are going to be
eliminated from the market promptly with a de-
43664 cline in demand.

Q. On line 10, page 43005, you say that business men refer to that, meaning prices carried below the costs of production, as ruinous competition, demoralized market. Do you as an economist also accept that characterization?

A. No, it is not the terminology that an economist would ordinarily use but an economist would recognize that phenomenon that the business man is talking about.

Q. In other words, an economist would recognize competition is necessarily ruinous to some of those engaged in it, would he?

A. Competition—more than that. Of course, he would recognize that, but—

Q. I did not get that.

A. More than that. Of course, he would recognize that competition would be ruinous to some who are engaged in the competition, but that in such industries, let us say, as public utilities, or as competing railroads, or as ocean steamship lines, that you can get competition—that competition can create a situation which carries prices to a very

low level, and that fact places a self-restraint upon the individual business man to prevent it from going into that tailspin, so to speak. If that self-restraint did not act, then you are likely to have ruin of one of the competitors, and then you are back to a situation of just one—one or more
43665 of the competitors, and you are back to a situation of one operating company.

Washington, D. C.,
43667 Friday, September 13, 1940.

43669 DR. CLARE E. GRIFFIN thereupon resumed the stand and testified further as follows:

Cross-Examination (Continued) by Mr. Wooden.

Q. Dr. Griffin, now, directing your attention to your testimony on page 43006, with reference to what is discrimination,—that is, economically significant,—do you recognize that the variations in mill nets among various mills at various destinations are the automatic reflection of identical delivered prices at those same destinations?

A. If various mills are located variously as to the particular destination in question, and the freight rates from the mills to the point in question are different, then the fact that the delivered prices were the same would pre-
sumably mean that the mill nets as between the
43670 different mills would be different, and then approaching it from another angle if the same mill sells to two different destinations which have in effect different delivered prices prevailing in those, at those destinations, then the mill nets received by the single mill to these various destinations would naturally be different.

Q. Well, will you mind answering my question, then?

A. Is that not an answer to the question?

Q. No.

Trial Examiner Norwood: Read the question.

Mr. Wooden: If it is, I cannot tell it.

(Question read.)

Trial Examiner Norwood: Is that true, or not?

The Witness: Variations in mill nets of different mills at different destinations.

Trial Examiner Norwood: Yes.

The Witness: I think I answered that, sir. I answered it from the two points of view; one, as to whether the mill nets of different mills selling at the same destination would be the same, and I concluded they would not necessarily, and the other from the point of view of the mill nets of any one mill selling to different destinations, and in that case—

By Mr. Wooden:

Q. Do you recognize that such variations are the automatic reflection of identical delivered prices at
43671 such destinations?

A. Given the fact that the same markets are farther away from a given mill freightwise than others, then it would be quite probable that the mill nets received by a certain mill would be different to the two destinations.

Q. Don't you recognize that that variation in mill nets is the automatic reflection of identical delivered prices?

A. The variation in mill nets as between the mill nets that one mill gets and another one gets would, if you assume that they are differently located relative to the market, and you further assume identical delivered prices at that market, that would lead to the different mill nets as between the two mills.

Q. And would automatically reflect the identical delivered prices among those mills?

A. I do not know what you mean by automatically reflect the identical delivered prices among those mills.

Q. Mathematically, then—mathematically reflect it, doesn't it?

A. No, I do not know what you mean by "reflect it." I have, I think, stated it as clearly as an economist can do so, because you are asking various things in that question; you are directing attention to differences in mill nets.

Trial Examiner Norwood: Well, doesn't the application of this method or system always produce a varia-
43672 tion of mill nets at the various mills; isn't that part of it?

The Witness: That would likely result, not necessarily.

By Mr. Wooden:

Q. And even as to the same mill, the variation in its mill net between different destinations is the reflection, is it not, of the fact that it has a delivered price at those two destinations,—that is, the same as its competitors?

A. No, to be sure that the—that a given mill selling to markets "X" and "Y" would be receiving different mill nets; one would have to assume that the delivered prices at "X" were different than the delivered prices at "Y". That does not grow out of the fact that there are identical prices at "X" and again identical prices at "Y," but that the prices at the two markets would be identical, one with the other.

Q. Don't you recognize that this prevalent pattern of delivered prices based on the lowest combination of mill base plus freight results also in a pattern of variations in mill nets?

A. Well, it results in variations in mill nets.

Q. Doesn't it result in a pattern of variations of mill nets?

A. You mean by that a pattern which is always—which always prevails? I do not quite follow you, sir.

Q. As long as the identical delivered prices prevail, doesn't the pattern of variations in mill nets prevail?

43673 A. I have just explained that the variations in mill nets as between two markets to which a given mill is selling grows out of the fact that there are different prices prevailing at those two markets. Now, it is probably also true that at those two markets there are identical prices paid by buyers for the products of different sellers, but that is not the significant causal factor for this present purpose that we are speaking of.

Q. I am not asking you about cause and effect, just asking about the relations of one thing to another thing, and mathematical form.

A. That is decidedly cause and effect, but I do not care to quibble about that.

Q. Well, briefly, you recognize a pattern, a consistent pattern in the identical delivered prices, but you do not see any consistent pattern in the variations in mill nets; is that correct?

A. I would not say that I recognize—I am sorry to appear to be quibbling about this—but I do not say that I see any pattern in the fact of identical delivered prices. As I said yesterday, under certain conditions, homogeneous products, freedom of choice, and so on, you are bound to have identical delivered prices. I would not say that constituted a pattern, unless you—

Trial Examiner Norwood: Now, whenever you have the identical delivered prices, doesn't it always produce
43674 a variation of mill nets? Isn't that part of it?

The Witness: That fact in itself produces a variation in mill nets as between different mills which are located—

Trial Examiner Norwood: As between the same mills which are located at different points?

The Witness: That fact does not—I have indicated it is probable some mill selling at different points will have differences in mill net. I am simply trying to be precise and say that that does not grow out of the identity. Well, I suppose you—

Trial Examiner Norwood: Well, out of it. Doesn't it invariably attend it?

The Witness: In a situation in which you have identical delivered prices, and I maintain you must have that in any competitive market, then if some sellers are located farther from that market than others, freightwise, obviously their mill nets will be different. Also—I think I have gone over that.

By Mr. Wooden:

Q. Doctor, you just keep repeating the same thing again, which all of us know.

A. Yes.

Q. My question is, don't you recognize in that situation that there is a pattern of variable mill nets that re-
43675 flect the pattern of identical delivered prices?

Mr. McFadden: May I ask which situation, because the Examiner was just asking several questions merely with regard to identical delivered prices regardless of how they were arrived at, whereas I understood Mr. Wooden previously had been speaking in a limited way of these identical delivered prices which were arrived at by the so-called basing point system. Now, would you mind clarifying it.

Trial Examiner Norwood: I think that is perfectly clear. The Doctor can answer that.

Mr. Wooden: I have been talking about base point plus freight.

Mr. McFadden: Well, if it is made clear, because I am quite sure, Your Honor, you were talking about things entirely different from Mr. Wooden.

Trial Examiner Norwood: Answer the question.

A. Well, I suppose this is true, that if one could imagine a thing which I cannot imagine, that with the homogeneous product and freedom of choice and so on, of the buyers, that still it were true that a given mill could get a higher price for its product in a competitive market than some other mill could get in that same competitive market, then the mill in question might charge higher prices to the distant markets than to the nearby markets, and, therefore, would not have a variation in mill net. Now,
43676 the reverse of that, I think, is what you are asking, that given the fact that the prices at the different markets are identical as between all sellers, and that implies that the mill cannot make a price at those different markets to suit itself, but accepts the prices existing in those markets, then if those markets are located differently freightwise from the mill, that would explain the existence of the different mill nets.

Trial Examiner Norwood: Now, do you claim that this basing-point system can possibly operate without producing a variation of mill nets?

The Witness: Well, I think the method of marketing which is sometimes called a basing-point method, I think might just as properly be called an f.o.b. method plus some freight absorption, does imply generally variations in mill nets; yes.

By Mr. Wooden:

Q. According to a pattern?

A. Well, a pattern, a sense in which I can see a pattern existing, is that a mill sells at a certain mill price plus freight when it can do so, and when it cannot do so it accepts the price that exists in the market; if that is what you mean by a pattern that is agreeable to me.

Q. Did I understand you to say a few moments ago that in answering Mr. Bond's hypothetical ques-
43677 tion you did not assume any pattern of identical delivered prices?

A. I know I am. I have asked many different questions to get one answer.

A. I would not have to deduce—

Mr. Brick: If Your Honor please, I object to Mr. Wooden badgering the witness in this manner. It is quite evident that the witness has on six or eight times this morning answered the questions which were put to him by Mr. Wooden, Mr. Wooden's questions being the same

question, and all Mr. Wooden is seeking to do is to get a different answer.

Trial Examiner Norwood: I do not think the witness is answering as directly to these questions as he might. I do not say that that is his purpose, but I do not think that the Counsel has done anything out of the way in his efforts to get more direct answers, and I hope that the witness will give more direct answers.

The Witness: I will answer as directly as I can, Your Honor, but some of these questions are complicated.

Mr. Brick: I think if they would give more attention to the witness' responses they would be more able to follow them.

Trial Examiner Norwood: That is your idea about it.

Mr. Porter: Your Honor, may I suggest Counsel
43678 has no right to compel the witness to accept a statement like "a pattern."

Trial Examiner Norwood: He cannot force him to say that.

Mr. Wooden: If he wants to say it is not a pattern, I will quit.

Mr. Porter: If he does not accept this word "pattern" he is not obliged to accept it.

Trial Examiner Norwood: Proceed.

Mr. Wooden: Your Honor, I object, and I point out that this is a part of the thing that takes time. It takes a half an hour sometimes to get a direct answer on a particular point.

Trial Examiner Norwood: Counsel may just proceed.

Mr. Leisure: Mr. Wooden has always—

Trial Examiner Norwood: Off the record, now.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

Go ahead.

Mr. Wooden: What is the pending question?

Trial Examiner Norwood: Read it.

(Record read.)

Trial Examiner Norwood: Go ahead.

A: I would deduce the fact of identical delivered prices
from the basic conditions of the industry and na-
43679 ture of the product that is assumed.

By Mr. Wooden:

Q: Would you deduce any pattern of variable mill nets from the same factors?

A. Not from the same factors, but if you mean from the long hypothetical question, yes.

Q. Would you deduce a pattern of variable mill nets reflecting identity of delivered prices?

A. I have said many times that the identity of delivered prices would exist regardless of the method of marketing, and, therefore, the pattern of mill nets, to use your words, do not reflect identity of delivered prices, they exist independently.

Q. Now, you testified that in your opinion as an economist discrimination was not economically significant unless buyers were injured by it; correct?

A. No, sir; I said unless competitors were injured by it.

43680 Q. Competitive buyers?

A. Buyers who were in competition with one another.

Q. How do you know whether or not dealers in different towns, adjoining towns, are or are not in competition with each other in the intervening territory?

A. Well, just on that statement, assumptions that you have made in this question; one could not know.

Q. Did you assume in your answer,—in your testimony on direct,—that the different dealers in adjoining towns were not in competition with each other?

A. I do not think I assumed that they were not, but said that if they were not then discrimination—economically significant discrimination—would not result.

Q. In other words, that testimony then had that "if" quality?

A. Well, I cannot recall every point in which I mentioned it and exactly what I said, from the facts that the product is a heavy product, that it is customarily used at certain points, and I think I am safe in assuming is not commonly reshipped about the country to any great extent.

43684 Q. Doctor, do you see anything illogical or un-
43685 reasonable about,—from an economic standpoint,—in a buyer expecting that if a seller is willing to accept certain mill nets from one buyer of the same quantity, that he should be willing to accept a similar mill net from another?

A. Do I consider that that is a reasonable expectation on the part of the buyers?

Q. Yes.

A. No, not if the buyers are differently located, or there might be various other things that would distinguish one from the other.

Q. Do you think a buyer has no ground for complaint from an economic standpoint if he complains that a seller is requiring him to pay a much higher mill net than he is requiring of another buyer on the same quantity?

A. In the first place, the buyer is not paying a higher mill net. He is paying a higher price, perhaps, for his product. The mill net is something that concerns the mill.

Q. Well, he pays the higher mill net when he pays the higher price, doesn't he?

A. Oh, you might say he pays the wages of the workers in the cement plant, too, but it is not strictly correct, I think, to use the term that way.

Q. But assume that the only thing that the two buyers pay to the mill is the mill net, then what is your answer to the question?

43686 A. Well, now, you are apparently visualizing a situation in which the buyers are buying a product at, right at the point of production.

Q. No, I am assuming that all they do is that they pay different mill nets to the seller, and they do not pay the seller anything else except the mill net.

A. They pay different prices for the products, I judge, under your illustration?

Trial Examiner Norwood: Can you make the assumption now, without taking issue about whether or not that situation can exist,—are you able to make that assumption and to give us an opinion on it, or not?

The Witness: I do not—I would have to repeat, Your Honor, I am sorry to be unable to answer that directly. The significant thing to the buyer is the price the buyer pays.

By Mr. Wooden:

Q. To the seller?

A. No, what he pays for the product in toto.

Q. The significant thing from the seller's standpoint is what he receives from the buyer, isn't it?

A. Quite true, that is one significant thing. The other significant thing is that he must be charging a low enough price which will enable him to get the business.

Q. My question is still pending, Doctor; I do not
43687 think you have answered it yet.

Trial Examiner Norwood: I think he has answered.

Mr. Wooden: I asked him whether from an economic standpoint the buyer that was paying that higher mill net would have any right to complain because he was paying a higher mill net than the other one.

A. I do not think so. I think he would have—it would be natural for him to complain. I do not use the word "right" to complain. It would be natural for him to complain if he were paying a higher price than someone else, and even that only under certain conditions.

43688 Q. Now, referring to your testimony on page 43020, and referring to that page with reference to your testimony on lines 23 and 25, particularly, in which you said that the occasional shading of the price or secret price cuts were among the factors which to you indicated competition, the existence of competition. Do you remember that?

Mr. Bond: May I show him the transcript?

Mr. Wooden: Surely.

(Mr. Bond hands transcript to the witness.)

By Mr. Wooden:

Q. And I will ask you whether if the occasional shading of prices indicated the existence of competition, wouldn't you think that the more frequent the shading became the more competition would be indicated?

A. First, I would call attention to my precise answer, that I added that as the last and minor factor, prefacing it by price, that perhaps the secret shading price cuts, and so on, that would depend on the particular—on the whole complex of circumstances and conditions of the trade, if that price shading, secret price cuts,—assuming they were almost universal, I am not sure that would be—

43689 Trial Examiner Norwood: The more the price cuts, the keener the competition, wouldn't you think, in any circumstances?

The Witness: No, I would not say that is necessarily true.

By Mr. Wooden:

Q. You are willing to accept infrequent price cuts, infrequent shading of the price as evidence of competition,

but you are not willing to accept very frequent shading of the price as any evidence of competition; is that right?

Mr. Bond: He has not said that.

Mr. Wooden: Let him say.

A. No.

43690 Q. Now, with regard to your testimony on page
43691 43021, as to improving of quality of product being an evidence of competition, lines 3 to 11, would your opinion on that matter be affected if you were to assume that competitors did not inform their—some of their most important purchasers, that their quality was better than the quality of other competitors?

A. Do you mean that they were, in fact, striving to improve the quality of their product, but they were keeping it secret from their buyers?

Q. No; as to whether that is an evidence of competition.

Mr. Bond: Under those circumstances?

Mr. Wooden: Yes.

Trial Examiner Norwood: Yes.

A. Well, on the face of it, it would seem like a strange procedure, but I would have to know all the circumstances surrounding before I could answer the question. It could be added that the improvement in the quality of the product, in order to lead us to expect that sellers would inform the buyers, should be improvements that really were significant from the point of view of the buyers, and made the product more desirable to the buyers of the product. That is, you might say in a particular industry, those buyers might be dealers, and the product might not be more desirable from the point of view of the dealers, although from some engineering point of view it might conceivably be. I can imagine situations of that kind. However, I am merely speculating on some things that would com-
43692 plicate the situation and make it impossible to give a universal answer.

Q. Now, referring to your testimony, Doctor, beginning on page 43023, where you say on line 5 that it is established and well accepted by economists that the
43693 price of a homogeneous product in a market at any one time would be a uniform price. That is the so-called classical economic theory, isn't it, or a so-called classical theory?

A. On that point there is no difference between classical theory and modern theory.

Q. On that point you do not see any difference, do you, between your own theory and that of Dr. Fetter, do you?

A. Well, strictly speaking, as I answered the question, namely—or, strictly speaking, as your question was asked, namely, as to the price of the homogeneous product in a market at any one time, and I was assuming well-informed buyers, and so on,—those other assumptions usually made, —I do not think that there would be any difference between Professor Fetter and me. Our differences would probably turn on what was the market, but at the market there are bound to be identical prices.

43694 Q. Yes, I supposed that was just where the point was.

Do you recognize that when economists theorize to that effect, to the effect given in your testimony on page 43023, that they meant a competitive market?

A. Yes, they would presumably mean a competitive market in this sense, that buyers have freedom of choice as between alternative sources of supply. Now, those are not all the conditions of a competitive market, but if you assume that there are well-informed, the product is homogeneous, and they have freedom of choice, then it seems to me the identity of prices would have a very strong tendency to emerge under those circumstances.

Q. Is it also true that in a non-competitive market you would expect the price of a homogeneous product to be uniform?

A. Of course, non-competitive, the market may be non-competitive in a number of respects, as I have just said.

Q. Well, a collusive—

A. Given these aspects, which are aspects of a competitive market, I would expect to find identical prices.

Q. Assuming a collusive arrangement on prices, you would also expect, would you not, the price to be uniform in a market?

A. Well, if there are among those who are in collusion—if there are several different sellers who are offering the product in the market at a given time, the product is homogeneous and the buyers are well informed, then the

43695 price would have to be identical whether there was collusion or not. I think I said yesterday the identity of price grows primarily out of the buyer's freedom of choice.

Q. You said a few moments ago, in another connec-

tion, that mill nets paid by the buyer to the seller were the price.

A. No, sir.

Mr. Bonds: Oh, no.

A. I never subscribed to that.

Q. Didn't you say that when two sellers paid different mill nets to the same buyer, and that is all that they paid him, they paid different prices?

Mr. Porter: I think you are assuming something.

A. Oh, now you are saying if that is all they paid to them.

Trial Examiner Norwood: Let the witness answer.

A. If that is all they pay.

By Mr. Wooden:

Q. That is all they paid to the seller?

A. Oh, you are getting in "to the seller." I said that price refers to what the buyer pays. Mill net refers to something that a mill gets. It has no more relation to price, than, let's say the—the entire amount which might be arrived at after taking some costs from a price which the consumer pays, you could deduct cost of bags, you could deduct cost of labor, and have something left to which you could give a name; a mill net would be in that same class.

43696 Q. Do you mean to say, Doctor, that the amount of money that the seller receives from the buyer for his product, which is the same amount as the buyer pays to the seller, and that is all that passes between them in the way of money; is that price or not?

A. No.

Q. Well?

A. The price—one could not be sure that was—there would be some circumstances in which that might be, but the price is what the buyer pays for the product when he gets it. He pays so much for it. That is the price.

Q. But, from the seller's viewpoint, isn't it what he pays to the seller?

A. The seller is interested in the return which he is getting.

Q. He is not interested in the price he is getting?

A. He would not call that his price—I do not think he would call that, himself, his price. Well, he might. I do not know the terminology business men might use. It would not, strictly speaking, be the price.

Q. Then, you in your direct testimony frequently used the word "price" as synonymous with mill net, looking at it from the seller's viewpoint.

A. Well, I have not examined the whole record right now. I may have fallen into that terminology, but I
43697 think it was clear, or hope it was clear that when you are drawing a line sharply, as we are right now, that price is what the buyer pays in the market in which he buys the product.

Q. You say it is what the buyer pays to two different people?

A. It is what he pays in the market in which he buys the product.

Q. Is it what he pays to the seller, or is it what he pays partly to the seller and partly to the carrier?

A. It is what he pays— Suppose, Mr. Wooden, we had a different organization of society here, that when this cement was to be taken over—

Q. Can't I get an answer to that question?—

Trial Examiner Norwood: Let him answer?

Q. —instead of a lecture?

A. Very well. I was trying to clarify it. I am willing to stop.

Q. You can clarify it after your finish your answer.

Trial Examiner Norwood: Finish your answer.

A. I was trying to illustrate the point by this, that one could conceive of a situation in a different form of economic organization in which at the time the buyer received his bag of cement there would be standing in line there the laborer who had worked on it, and the people who had packed it, the people who had made the sacks, and the people who had carried it, and they all say, "we want
43698 our shares here," but the amount, the price, is what is paid by the buyer. If that does not help, I am sorry. I was trying to clarify.

Mr. Wooden: Your Honor, I object to the witness being so discursive on a matter without answering the question.

Trial Examiner Norwood: Now, I think you asked him a rather difficult question there, one of the main issues in this case, and since you asked that question I am going to let him answer it completely. I think it is a question of law.

Mr. Wooden: It is also an economic question.

Trial Examiner Norwood: Economic, but it is a question for the Commission to decide from the facts here.

Mr. Wooden: It is a question of law. I do not question that, Your Honor, but the function of opinion is to help the forum decide some of those questions.

Trial Examiner Norwood: Hasn't this witness answered that same question before?

Mr. MacIntyre: If Your Honor please, may I make an observation on that to you in response to your question?

Trial Examiner Norwood: Yes.

Mr. MacIntyre: The witness has persisted in answering the question, and has answered it a number of times from the viewpoint of the buyer, and his last answer was made from that viewpoint. The question has persistently
43699 been put to him for the matter of a great while from the viewpoint of the seller. He persistently,—that is, the witness,—persistently refuses to answer it from that viewpoint, and that is what Mr. Wooden wants.

Trial Examiner Norwood: I think this witness answered the question for me about that as to whether there could be two prices. I think we are through with this when he finished this question.

I think he has clarified his position on it.

Have you finished your answer?

The Witness: Yes, sir.

Trial Examiner Norwood: Go ahead.

Mr. Wooden: Do I understand the question is ruled out?

Trial Examiner Norwood: No. He answered it.

By Mr. Wooden:

Q. I would like you to answer the question from the viewpoint of the seller.

Mr. Bond: I object.

Trial Examiner Norwood: Is there a seller's price as distinct from the buyer's price?

The Witness: In some markets where the amount received by the seller is the same as the amount paid by the buyer, there would be no occasion to quarrel about it, and then you talk about one thing and the other. Where
43700 they are separate, then I maintain that the price is what the buyer of that product pays for that product, and that the amount which may be left net to the seller after he has paid certain costs, which might be the cost of transportation, might be the cost of packing, packing cement in bags, might be any cost, of the cost of salesmen, that is not price, that may be looked upon as a net

return to the seller, and is, of course, significant, but it is not price of the cement.

By Mr. Wooden:

Q. When you testified on direct examination about sellers making different prices in different markets, didn't you mean that he was taking different mill nets in those different markets?

Mr. Bond: Could you refer to the page, Mr. Wooden?

Mr. Wooden: I can, but I don't care to.

Mr. Bond: I think the witness is entitled to it.

Trial Examiner Norwood: I think he may ask him if he testified, without citing any page.

Mr. Bond: He did not ask him if he testified to it. He said when you testified to it did you use it in this sense.

Mr. Wooden: I will make two questions out of it, then.

Trial Examiner Norwood: I shall ask the witness
43701 if he did so testify.

Did you?

The Witness: I am sorry; I was following the objection. May I have the question read?

Trial Examiner Norwood: Read it.

(Question read.)

The Witness: That is not what I meant. You might conclude, as you said a while ago, as a result of that fact you may get different mill nets. When I said "selling at different price in different markets," I was using "price" in the sense I just explained.

By Mr. Wooden:

Q. Now, Dr. Griffin, calling your attention to your testimony on direct near the top of 43071, where you said that high overhead costs had the effect of leading a producer to charge different prices on the different parts of his output; then you first said that you were referring to base prices; and then under a question from Mr. Bond asking you whether you meant base prices when you said that he got
different prices in different markets, you testified:
43702 "No, absolutely not. Mill net—if I may change it a second time, it is mill net to which I am referring now."

Do you now mean to say that you did not testify that mill net was the equivalent of price?

A. Well, this is an instance, I think, to which I was referring a moment ago, that I might have slipped into the

terminology that was being used. I did not want to speak of it at every point.

Q. You corrected yourself there, didn't you?

A. Strictly speaking, I should have said "has the effect also of leading him to accept different returns on the different parts of his output."

Q. Now, referring to page 43026, line 16, you speak of the fact that buyers are well informed and are seeking to preserve their own self-interest. That would be a factor in bringing about uniformity of price.

Wouldn't—

A. Uniformity—I beg your pardon.

Q. Wouldn't you think that buyers' own self-interest, which you say they were seeking to preserve, might lie in getting lower prices from one seller than from another?

A. Well, the very fact of their striving to get lower prices—I mean now what they paid for the thing—from one or another is the thing that, paradoxical as it may seem, prevents them from doing that. The fact that the
43703 buyers are well informed, and that they are all striving for the lowest prices will bring about the identity of prices in a given market.

Q. And suppose there is only one buyer in these destination markets you speak of, is that a market in the economic sense?

A. Well, that gets off to a very fine theoretical point, on which I think frankly, there would be a difference of opinion among economists, how far can you narrow this down as to the number of buyers and the number of sellers and still have a market, but it seems to me that if the buyer, the one buyer is well informed, and he has a choice between alternative sources of supply, that he is not going to pay more to one source of supply for the product from one source than from another, assuming that the different sources of supply are adequate to meet his needs.

Q. Well, there would not be any conflict in that case between the interests of different buyers to produce the identity of price?

A. No.

Q. And suppose you were to assume that in the cement industry among dealers there are numerous towns where there is only one buyer of cement, would you say that that was an economic market in such instances?

A. Well, I would call that a market. As I have said,

the economists are splitting hairs in trying to say just when you have a market and when it ceases to be a mar-
43704 ket. Some of them might say that you would have to have more than one buyer. I do not think so, for the reason that I have indicated, that if this one buyer does have the alternative sources of supply from any one of these alternative sources he can get enough product to meet his demand, then I see no reason why he would pay more to one supplier than to another, and thus you would have identity of price in that sense. I put the other one in partly because I assumed that the identity of price referred to the prices paid by different buyers in the market, and obviously you could not have that concept if you only had that one buyer.

Q. You would not think that one buyer would be interested at all in whether different sellers made him the same delivered price, or not?

A. Well, that one seller would—

A. One buyer.

A. That one buyer would take the lowest delivered price
6 that was offered to him, and that would become the effective price at that point; and if any other seller wanted to share that business, to get part of this one buyer's patronage, he would have to offer an equally low price.

Q. At any rate, in such conditions it would not be representative of what economists generally consider as necessary to constitute a market?

A. Well, I do not think any economist that I
43705 know of would disagree with my statement right here, that even one buyer having alternative sources of supply as I have described,—that that situation would not lead to identical price. Of course, the economist would like to find a good example of a market. He would like to find a number of other things involved. But if he did not find them, I think that most economists would agree with me on this proposition right here. I am sure they would agree with me as to the effect of this upon the identity of price. I say I am sure. I have not consulted all of them.

Q. The effect upon identity of price in a town where there was only one buyer, you are sure they would agree with you?

A. Under the assumptions that I have made, that that buyer is informed of the different sources; that he does have alternative sources; that the product is homogeneous;

that the different sources are willing to supply all of his needs.

Q. Now, there are various kinds of markets, aren't there, such as a producing market, for instance, wholesale market, retail market?

A. Yes.

Q. A consuming market?

A. The term "market" is used ~~rather~~ loosely, I am sorry to say, by economists at times. Here we are trying to use the term precisely.

Q. Didn't the classical economists use it as re-
43706 ferring to a condition of competition rather than as a place?

A. I can't generalize as to all of them. It is sometimes used in that sense; sometimes in the rather loose sense of a world market for wheat. But I think any economist would recognize that he is speaking rather figuratively when he mentions that.

Q. Well, isn't the concept of a market being a condition an important concept?

A. Well, yes, I think it is an important concept, and it is a condition that I am describing here. It is a condition that, if you wish, of offering a certain product as of a certain place, offerings being made by different suppliers, and the buyer being free to choose between those suppliers.

Q. Do you see that the place where a market is considered may affect market as a condition instead of merely as a locality?

A. That question is not clear to me without further explanation. I do not quite see what you are getting at.

Q. You are familiar, are you not, with the old concept of forestalling a market?

A. Yes.

Q. Didn't that mean dealing in a place other than the open market, or didn't it involve that?

A. Yes. The market as used in that sense—there were certain very definite assumptions about that market.

43707 Q. And when they went out of the open market and forestalled it, they transferred the market for their transactions to another place, didn't they?

A. It depends in part on where the product was to be delivered, for if they met at the edge of the town and were talking about delivery of the product as of that town; they had not moved that market. It would also depend upon

whether a number of them did it, whether there was a group of alternative—of competing sellers at the place, and so on. There are a number of things that would enter into it.

Q. In other words, they set up a new market outside the open market that they had been accustomed to dealing in?

A. I do not want to have to repeat all of the conditions that I made here, but under those conditions, yes. That is, if they took—if they went outside, and a number of sellers met a group of buyers and there took delivery of the product as of that place outside the town, then I would say they would have a market.

Q. And that was known as forestalling a market, too, wasn't it?

A. Yes. That—pardon me. That would not be strictly correct, because that was not the customary way the thing would be done, as I understand it. I do not pose as an economic historian, but my understanding is that one buyer would meet one seller on his way into the market and
43708 make a deal with him before the product got to the market. Well, now, that one buyer meeting that one seller, making an individual transaction, would be a very theoretical point as to whether you should say that particular spot where you happened to meet him constitutes a market.

Trial Examiner Norwood: If one buyer met a number of sellers, he might be waylaid by all of the sellers that have one particular commodity.

The Witness: That is conceivable; yes, sir. That is conceivable.

By Mr. Wooden:

Q. Do you recognize in economic thinking, your economic thinking, such a term as a closed market?

A. Yes.

Q. What is that?

A. Well, I would recognize—that term does not have very precise meaning. I would assume it would mean—that a closed market meant a market in which there were only a certain number of buyers and sellers and certain specified ones could operate.

Q. It does not mean one where a collusive arrangement existed?

A. No, unless you want to say it is collusive arrange-

ment that you recognize those people who are entitled to trade on the market.

Q. It has nothing to do with the conditions under which they trade?

43709 A. I would not think so.

Q. And do you recognize the term "open market" as having some economic significance? If so, what?

A. That has no commonly accepted meaning except that which could be drawn from the context. It might sometimes mean that all of the—that in a certain market there would be some regular way of reporting promptly every transaction, the price that was paid, and so on. It might refer to that. It might refer to the fact that anyone can come and trade on the market. You can gather the meaning from the context.

Q. It would also mean a competitive market, would it not?

A. Why, ordinarily, yes, but I say the meaning has to be gathered from the context. It is usually clear when we read the statement what is meant.

Q. Now, on page 43027, lines 9 to 13, you say that if practically all the producers in a given industry were located at the same place and buyers came to that place to buy their goods and at that point compared the values, then that would be the market.

A. Yes.

Q. Would you say that buyers had to come physically to that place to buy their goods and compare their values?

A. No, I suppose that would not be necessary that they should come there physically; they might do it by telephone.

Q. Telephone or by correspondence. Anyway, to
43710 get the information that will enable them to make the comparison of values; is that right?

A. Yes. The essential feature of it is that the values of the products are being compared as of that place.

Q. Well, then, assume that you have a certain section where there are eighteen or twenty cement mills under different ownership and all having the same freight rates to certain destinations, certain territory, isn't it a fact that when buyers in that territory compare the delivered prices from those mills that are in effect comparing their mill base prices as well as their delivered prices?

A. The figures might come out the same under certain

assumptions that you would lay down, but that is of no significance to the buyer. What he is comparing is what he is going to pay at the place.

Q. But my question leads to this: If, in substance, they are also comparing mill nets when they compare delivered prices, aren't they comparing values at the mill?

A. No, sir. They are comparing the values—they are comparing the offerings made by different sellers as of the place where the goods are going to be delivered.

Q. And all of which sellers have the same freight?

A. That would not affect my answer. You may figure back and say that this would have been the same had they done something else, had they been thinking of some-
43711 thing else, but certainly that is—the amount of the mill net is of no significance to the buyer.

Q. Well, if the buyer found that the delivered price of one of that group of mills was five cents lower than the others, wouldn't he have good reason to conclude that the mill net, or price at the mill, was that much lower?

A. I do not see that he would have any interest in it. He could buy the cement five cents lower, that is the important thing.

Q. Isn't he concerned with that?

A. Would he be able to deduce something, you are asking?

Q. Yes.

A. I suppose he would, if he cared to do so under the assumptions that you have stated.

Q. Now, on page 43026, line 17, you state that prompt knowledge on the part of competitors of one another's prices would hasten the result of uniformity of price.

A. Yes, sir.

Q. Then, would you say that the filing of competitors' prices with some central agency, such as was done under N.R.A., would hasten uniformity of price?

A. Other things being equal, centering attention just on that factor, I would say yes.

Q. Would you say that the fact that all competitors give a five-day notice of the effective date of advances
43712 would also tend to hasten uniformity?

Mr. Bond: Notice to whom?

Mr. Wooden: Buyers.

A. I am not so sure of that one, because the information given to buyers—well, I think we are safe in assuming

that that information would get to other sellers. Some of the sellers might decide to meet that price. Other sellers might not decide to meet that price. Then you would have on the face of it apparently two different prices. But that unlikely situation is explained by the fact that these prices that are filed are not prices in the true sense of the word; they are not being paid.

By Mr. Wooden:

Q. What are they?

A. Announcement, I suppose, of what the seller is going to ask. They are not even an announcement of what the prices are going to be; they are an announcement of what the seller is going to ask five days hence, if I understand the assumption correctly.

Q. But they are delivered prices, to delivered price quotations?

A. Well, price quotation is a very different thing from price. Price is something that is actually paid.

Q. Yes, I appreciate that.

A. It is the essence of the matter.

4713 Q. Would you think that if one seller announced his prices, certain higher prices would go in effect five days hence, and another seller were to announce the same advance to the same figure, would announce that his advance would not go into effect until 10 days, wouldn't you think that would tend to hold back the uniformity of price—delay it?

A. It would not hold back, in my opinion.

Q. Delay it?

A. Well, I hate to be emphasizing such very fine points, but, strictly speaking, it would not be holding back the identity of price in the sense of effective prices, because that refers to what the buyers would actually pay—if one man's higher price goes into effect, let us say, on the 5th of July, and the other man's higher price does not go into effect until the 10th of July, then I should think between the 5th of July and the 10th of July that the first one would not sell any cement. Now, there may be detailed circumstances in the trade that I do not understand, but I mean just on the face of it—

Q. Well, wouldn't that variation of five days in the effectiveness of their advance tend to delay uniformity that you presume would ultimately come out of the situation?

A. No, it would not delay the uniformity of the price—

of the effective price. It is obvious by your assumption that you have got a lack of uniformity in quoted prices.

But I am saying that some of those quoted prices
43714 would not be effective under those circumstances.

Q. When you spoke, on page 43029, of fear of retaliation being a factor in causing relatively rigid prices—

A. Yes, sir.

Q. —did you have in mind fear of price competition that would reduce the price below the level previously set by the one who has such fear of retaliation?

A. Why, I think I will answer that "yes," although it does cover different things. There is the fear that the price level may be pushed down to a very unprofitable level; and there is, secondly, the fear, if you wish to call it, the exception that a price reduction will be promptly met by a competitor, and, therefore, the original competitor would gain no competitive advantage from it.

Q. Would you include in such fear of retaliation fear that some base mill would put in a low base at another mill which had not previously been a base mill?

A. I did not have that in mind. I was not talking about particular aspects of this industry.

Q. Well, wouldn't that kind of fear be includable under fear of retaliation?

43715 A. I suppose it would, although that was not what I had in mind. That is, it might be described as fear of retaliation. I would accept your statement of it.

Q. Now, on that same page you discuss the ability of sellers in a manufacturing industry to control their respective volumes of production and adjust it to the variations in demand and conditions of the market.

A. Yes.

Q. In your opinion as an economist can prices remain rigid if some producers substantially increase their percentage of the total business compared to their competitors?

A. Can prices remain rigid under those circumstances?

Q. Yes.

A. Oh, yes.

Q. Isn't there a strong tendency for them not to remain rigid if the different competitors see that their competitors are out-distancing them in the race for total volume?

A. Well, that might lead a competitor who finds himself in a difficult condition to try to remedy it by different prices, but certainly it is very common in competitive industry to refrain from reducing prices under those circumstances. It is not my common observation that, in a field where mortality is very high, namely, in the retail field, that before a retailer who is on the way out gives his last gasp and passes out that he universally enters upon price reduction. He might.

43716 Q. I said "strong tendency."

A. No, I would not say it was a strong tendency. It is one thing he might do. I think in the case I just cited that commonly they do not do it.

Q. Can an economist reason from the fact of price rigidity to the fact of controlled production as reason from controlled production to price rigidity?

A. Well, under some circumstances. You would have to know all the facts of a situation. But there are some places in which you would judge from the fact that there is a relative rigidity of price that apparently producers are controlling their production. Understand, I do not mean by "controlling production" commonly controlled by the whole industry, but controlled by each individual producer of his production.

Q. Do you have any reason as an economist to suppose that one would be likely to control his production in any different degree than others?

A. Oh, it would be quite surprising if there were not variations on that point.

Q. In other words—

A. That is just arising out of the fact that different business men size up the situation differently, and I would expect to find that.

Q. And there are wide differences between the ability of different producers to control production de-
43717 pending upon such matters as their overhead expense and the amount of borrowed money, and all that sort of thing?

A. Well, there might be differences on that score.

Q. Would the fact that each competitor knows what proportion each other competitor is obtaining of the total business available have any effect similar to the filing of prices in hastening the price uniformity?

A. No, I do not think that would. I do not see offhand

—I am afraid I can't answer the question very definitely how it would affect the uniformity of prices directly, except as it works through this factor possibly, that knowledge of the amount that other producers are producing would tend to have the effect of enabling this one producer to control—to determine his production accordingly.

If potato growers, for example, could know at the time that they were planting their potatoes just how many potatoes all others were planting, that would certainly be a factor. They would take that into account in determining how much they would plant, and that in turn would mean that you would get, through that combination of forces, a more accurate adjustment of the supply being produced to the conditions of the market.

Q. Would you say that the fact that competitors in an industry such as cement each know what proportion each of them is producing of the total volume of business
43718 that that has any tendency to hasten or facilitate any uniformity of policy regarding production?

A. Well, I think I have just explained that that knowledge of the percentage of the business that mills are getting, or expect to get, or did get in the past, would be a factor which another mill might take into account in determining the amount that he would produce, but it would not be a final factor by any means, because, while there are a great many other considerations involved, it would be one of the factors that business men would presumably consider.

Q. Would it facilitate the individual self-
43719 restraint of production that you were talking about in your testimony?

A. Individual self-restraint of what?

Q. Of different producers regarding their production, regarding adjustment of their production.

A. I do not know that it would hasten it.

Q. Facilitate.

A. It enables them to decide more reasonably. They would have to make the decisions, anyway. Now, they might make it on accurate information, or they might make it on more accurate information. The Government, the Department of Commerce attempt to provide the Department of Agriculture attempts to provide to the farmers more accurate information. But it would be an

attempt to adjust one's volume of production to the known facts of the market.

Q. And to the known facts regarding what competitors were doing?

A. Well, what competitors are doing is one of the facts of the situation, yes.

Q. Now, on page 43030, line 1, you say that in
43720 a manufacturing industry, like cement, as I understand it, the situation is unlike that in the staple agricultural products in that in the manufacturing industry the very price change results from the deliberate decision of some individual business man.

Are such prices what economists would refer to as administered prices?

A. Which one? You mean the prices of manufacturers?

Q. Yes, resulting from the deliberate decision of some individual business man.

A. I think some economists have used that term. It may be an unfortunate term in giving to a layman an impression that an economist does not mean to convey. It is like a number of other terms that we have used that have that unfortunate effect.

But what I have in mind, and I think perhaps what some people have in mind when they use the term "administered prices," would be that a business man decides what price he is going to charge for his product, and then he produces as much product as he can sell at that price. In that sense it is administered as a result of a decision by—a deliberate decision by some business man. It is just a statement of what is perfectly obvious in the world when we stop to think of it.

43721 Q. Assuming that that is how base prices are determined by base mills, then would you say that those are administered prices?

43722 Trial Examiner Norwood: I shall overrule the objection and ask him to discuss that. Just explain that.

The Witness: Read the question.

(Last question read.)

A. Well, I have just now described administered prices, and when you say assuming that base prices are like that and ask are they administered prices, obviously yes.

By Mr. Wooden:

Q. Now, referring to your testimony on pages 43031 and 032 with regard to price rigidity, I will ask you assuming that price rigidity is to be measured in terms of base point—base prices, whether the basing-point system might not itself be a factor in price rigidity?

A. I do not think so. I think that the existence of a number of competing mills having the characteristics that we have recognized here, that have been assumed here, self-interest; all the rest of them, those factors would have a bearing upon the rigidity of base prices.

Q. Do you wish to say that rigidity in base price is no indication to you that the basing-point method in which base prices appear is itself a factor in the rigidity?

A. Yes.

43723 Q. What distinction would you draw between rigidity of price and stability of price?

A. I do not think there is a difference between those two.

Q. Now, on page 43037, line 10, you say that stability of price is no more a characteristic of monopoly price than it is of competitive price.

A. Yes.

Q. Now—

A. I would say the same thing if the word had been "rigidity."

Q. Would you think of no economic significance if the price of certain stock on the stock exchange, or a certain commodity on the commodity exchange, remained rigid for four or five years?

43724 A. It is a very difficult assumption that you are asking me to make. Knowing the stock market from general observation, it is difficult to conceive of it. But if you insist upon conceiving of it, I would say my difficulty of conceiving that as a result of collusion is great.

Trial Examiner Norwood: In case there were some sales daily at that same figure, wouldn't it indicate some sort of price control?

Mr. Wooden: That is the point of my question.

The Witness: You mean with regular sales being made day by day all along?

Trial Examiner Norwood: Yes.

43725 The Witness: Well, as I say, it is difficult for me to see why anyone who has as much control over

prices as that should want to do that as well as that it is difficult for me to see how that rigidity could have arisen out of competition.

Trial Examiner Norwood: Well, we are not going into that.

The Witness: You ask if that is the thing I would naturally expect from competition.

Mr. Wooden: Yes.

The Witness: No, I would not.

By Mr. Wooden:

Q. Are you familiar in your reading and thinking of any knowledge that one of the chief arguments advanced by business men for cooperating with their competitors is to maintain stability of price?

A. I have heard all sorts of reasons given for business men wanting to cooperate with other business men.

43726 Sometimes that reason is to—if it relates to price, maybe to advance the price at certain times and drop it at other times, to suit their best interests. I suppose sometimes it might be a desire to keep the price the same for a period of time.

What I have been saying is that I see no reason for assuming that one is a more profitable thing than the other, and that for—if you carry it on to the extreme of control, then I think it is quite clear that the stable price—rigid price would not be in the interest of those who are in collusion.

43730 Q. Doctor, do I understand,—taking up where we left off,—that you agree as an economist that the tendency of destruction of price competition is to facilitate inflation of capitalization?

A. No, I would not—I wonder if I could have the last,—my last answer before, so we could see just where we did leave off.

I think I remember substantially what it was. The term as popularly used, Mr. Wooden, I think would carry that idea, and I may have answered with that, in that usually popular connotation of inflation of capital costs being encouraged by—did you say imperfect—

Q. No, by destruction of competition.

A. By destruction of competition, and of the effect which overcapitalization would have upon costs. I

43731 would like to say, to clear up any possible misunderstanding, that from the point of view of an econo-

mist I think that, as distinguished from a popular point of view, that capital costs, strictly speaking, are not increased by overcapitalization, if that is the term, and that destruction of competition would not necessarily affect overcapitalization.

Q. Don't you agree that—you mean there, I take it, real capital costs are not increased by overcapitalization?

A. That is what I mean; yes, sir.

Q. But isn't the practical difficulty in telling, after the overcapitalization, and assuming overcapitalization, what part of it represents real capital and what part of it represents water,—isn't that the fact?

A. Well, it presumably would not be difficult for the owner to do so. He might misrepresent the facts to someone else, but that brings me to the very point I have in mind, that the mere fact that outsiders are led to think that there is more capital invested in a plant than actually is invested in it, has no economic significance, I believe. It does not enable the owner of that plant to get any higher price because obviously people are not going to pay a man a higher price for his product because he claims rightly or wrongly that he has an expensive plant.

Q. Are you trying to say that overcapitalization or inflated capitalization is of no serious economic consequence to buyers?

43732 A. I am saying that; yes, sir; unless—I would have to make one exception, if the industry in question were a public utility, subject, so that its rates were subject to regulation by a regulatory body, and if you could convince the public utility body, regulatory body, that the capital invested was larger than it actually was, then it might have an effect upon the rate which they would permit you to charge, but I suppose it would be a rather naive public regulatory body that would be taken in by as simple device as that.

Q. But without regulation by such body, why, the general public is still more helpless, isn't it, to know whether there is overcapitalization in an industry or not?

A. Well, they may be helpless to know that, but I do not see that that has any economic significance except in the case of an industry where the rate is regulated by the public. The public is not going to pay any seller more for his product because he claims that he has more capital invested than he actually has.

43734 Q. Do economists, particularly you, consider that the difference in cost by many different competitors naturally tends to cause a difference in their prices?

A. No, sir.

Q. Are you assuming that it has no bearing upon the prices to be charged by any of them?

A. What has no bearing on them?

Q. The difference in cost.

A. The difference in cost?

Q. Yes.

A. Has no bearing upon the price that will be charged by any of them. In a competitive market in which buyers are well informed, the product is homogeneous, and in which the buyer has free choice as between alterna-
43735 tive sources of supply, I do not see how difference of cost to the seller could affect the prices that they will pay—that is, the mere fact of difference of cost—

Trial Examiner Norwood: I think you have answered the question.

By Mr. Wooden:

Q. And, conversely, would you say that if costs were uniform that also would have a bearing on prices?

A. Yes.

Q. Now, referring to your testimony on page 43045, lines 5 to 11, where you discussed the effect of a chain mill set-up on price rigidity,—do you have it?

(Mr. Bond hands transcript to witness.)

A. Yes, sir.

Q. Wouldn't you say that on the basis of the assumptions you made in answering that, in giving that testimony, that a chain mill has some special interest in the maintenance of price rigidity that non-chain mills do not have?

A. Under the assumption as made, I said that if it knows it has to make a corresponding change throughout its whole area, and so forth.

Q. In other words, it would have a special interest that other mills did not have?

A. It does not mean it would have a greater interest. It means it has that particular interest which ob-
43736 viously could not apply to a mill,—to a company which was not a chain mill company.

Q. Would your answer be affected in any way if you

were to assume that basing-point prices were usually made by chain mills at their mill plants?

A. No, I think not.

Q. Now, referring to your testimony on page 43046, where you again speak of the factor of perfect and prompt knowledge on the part of buyers as a factor making for price rigidity.

A. What part of the page, please?

Q. The top of the page, running over from the preceding page.

A. I think, Mr. Wooden, that there is—

Q. I have not asked a question yet.

A. I beg pardon?

Q. I have just directed your attention to it, so far, and have not asked you a question.

A. Could I make a remark? I think there is an error, which it seems to me is quite obvious, that in the first line we were referring to sellers, that it is also true the perfect—May we go off the record for a moment?

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

By Mr. Wooden:

43737 Q. Isn't that perfect and prompt knowledge an important factor on the part of both buyers and sellers?

A. On reading the sentence, I think there is an obvious error in the second word of the first line, it should be "sellers" instead of "buyers."

Q. But with that correction, wouldn't you say that perfect and prompt knowledge is an important factor making for price rigidity on the part of both buyers and sellers?

A. Well, at the moment I do not see how the perfect knowledge on the part of the buyers as that—well, I suppose you could say this, that if sellers know that there is perfect knowledge on the part of the buyers, then they would know that any price change which they made would be immediately known to all buyers. Now, if we do not assume that that knowledge goes on to the other sellers, I do not see that that factor in itself would tend to create rigidity.

Q. Well, isn't perfect knowledge on the part of both buyers and sellers one of the assumptions of perfect competition?

A. Yes, but as I pointed out in the question, it is a sort of a—in my answer—it is a sort of paradoxical situation that arises from that, that perfect knowledge on the part of sellers may be a factor actually contributing to rigidity.

Q. I will ask you now why, if that be true, there is not more rigidity in price on the commodity and stock exchanges where the knowledge is more perfect on the
43738 part of sellers and buyers than anywhere else?

A. Well, that would be a natural presumption, if you could assume that all the other facts about the commodity exchanges are similar to the situations where we do find rigidity in price. Obviously, they are not.

Q. So, then, you cannot treat knowledge alone as making for price rigidity, can you?

A. No, except in combination with these other factors.

Q. Isn't the different strength of sellers and buyers a factor in determining price rigidity?

A. I do not know what you mean by the different strength of sellers and buyers.

Q. Different economic or bargaining strength,—don't you recognize—

A. I still do not know just what you mean by "bargaining strength."

Q. Well, don't you recognize that on the commodity and stock exchanges one reason the price fluctuates so frequently is because different buyers and different sellers are coming into the market with different degrees of necessity of selling and different degrees of desire for buying?

A. Well; I never heard that offered as the explanation of variability of price on the produce markets.

Q. Well, isn't it a reasonable economic explanation?

A. I do not think so. I think there are a number
43739 of other things that explain that.

Q. I do not doubt there are, but centering your attention upon that one thing, don't you think that is a reasonable assumption to make, that the relative strength of the different buyers and sellers is different?

A. Again, I do not know what you mean by the relative strength of buyers and sellers.

Q. Different degrees of necessity for selling and different degrees of desire for buying.

Trial Examiner Norwood: Different degrees of ability to buy, too.

Mr. Wooden: Yes, that is a fact.

A. I do not think that that leads to, what did you say, variation in price?

By Mr. Wooden:

Q. No, fluctuations up and down.

A. No, I do not think that that is affecting fluctuations up and down. You commonly have that in any market, that some buyers desire products more than other buyers do. They do not therefore pay different prices for the product; nor do I see that it makes for variation from day to day, the fact that that situation exists.

Q. In your testimony here, have you been assuming that all cement sellers and all cement buyers were of equal —on an equal basis so far as the desire of each to

43740 sell and the desire of each to buy was concerned?

Mr. Bond: I object. It is lumping all of his testimony. I submit a particular question and answer may be pointed out to him and he may be asked were you in that case assuming.

Trial Examiner Norwood: The objection is overruled.

A. No. I was not assuming that. I do not know that anyone would assume that about any market situation. How can one know that all the people who are buying a given commodity have equal desire for the commodity. Desire is an unmeasurable thing in the first place, and it essentially would not be significant anyway.

By Mr. Wooden:

Q. And it would not be significant if you assumed different degrees of ability to buy?

A. Well, significant for what purpose?

Q. From the standpoint of whether the price remained rigid or not.

A. No.

Q. Now, referring to your testimony on page 43059, does your testimony on page 43059, lines 4 to 17—

(Mr. Bond hands transcript to the witness.)

Q. Referring to your testimony on that page, those lines, will you say that the more inelastic demand is that the greater is its tendency to cause a stagnation of production?

43741 A. May I read the answer, please?

(The witness is reading.)

A. I think I have it in mind,—your question now is whether inelasticity—whether the greater the inelasticity of demand the greater the tendency to stagnation of production. Do you mean that the greater the tendency for production to slow down, is that what you mean, or to under some circumstances—

Q. Yes.

A. Well, as I said in that answer, when the demand is inelastic then one of the reasons for the producer lowering his price is removed,—the other reason being his desire to get a larger proportion of the existing business, but the inelasticity of demand rules out one of the reasons for his lowering the price. I suppose you could put it the other way around; and say that if a manufacturer attempted to stimulate production by lowering price, then the inelasticity of demand would prevent him from doing so, and in that situation it is possible that he would thereby be prevented from stimulating the demand, and thus he would have to get along with a smaller volume of business.

Q. And if each manufacturer did that wouldn't it result in stagnation of production?

A. Well, it is clear that if you have a product of inelastic demand, and demand tends to fall off, and a reduction in price will not materially stimulate de-
43742 mand, those conditions taken together will tend to reduce production or, to use your term—I do not recall it.

Q. Cause stagnation?

A. Cause stagnation of production. That is not a term that is commonly used in economics, but decline in the rate of production.

Q. Haven't you used that term, yourself, in some of your writings,—stagnation of production?

A. Oh, I might have.

Q. I mean the same thing by it that you meant in some of your writings.

A. I do not know what I meant in the writings without looking at the context of the statement, but there is no need of quarreling over it. I accept your use of the word.

Q. And you would agree, I suppose, that stagnation of production is synonymous with depression, almost, would you?

A. No, sir.

Q. Isn't stagnation of production one of the accompaniments of depression?

A. Yes, sir.

Q. All right.

A. But not synonymous with it.

Q. Isn't it one of the very large factors in a depression for production to be stagnated?

A. You mean and causing a depression?

43743 Q. Not in the first instance, but assuming a depression comes on, isn't stagnation of production a factor in continuing it?

A. Well, that is a very much debated—what are the causal effects either in creating or continuing a depression.

Q. I did not want to go into that. I knew we would go around in a circle if we got into that.

A. I understand that is what you are asking.

Q. No.

A. If you are saying that stagnation of production is one of the important features of a depression, I think I answered that in a previous question, yes, it is.

Q. Is it not also a factor in the continuation of the depression?

A. Using the word "factor" in the same sense, it is a feature of continued depression without implying cause or effect.

Q. When you testified on page 43065 about a business man separating his markets, you saw an analogy in that, did you not, to what you understood to be the method of marketing employed in cement?

A. I think there is perhaps—there was an unfortunate implication that in all cases the business man could do so by his deliberate action. It would be more accurate, I think, to say that the business man chooses to sell in separate markets.

Q. And when you referred to one of the methods of separating markets, as being the separation of

43744 markets geographically, you had in mind what the method of marketing cement involves?

A. Yes, without re-reading it, I assume I had in mind that the geographic separation of the buyers relative to sellers created separate markets, and the business man would take that into account, that he was selling in separate markets.

Q. In order that he might have a different price policy in those different markets?

A. Well, he would have a different price policy in those different markets, naturally the business man would like to sell all of his goods at his maximum mill net but he accepts, in order to sell goods in a distant market, he accepts a lower price on that part of his business than on the other part, and—that is all. That is to say, if I left the impression here that he would always accept a lower net in more distant sales than in nearer sales, I should correct that, although perhaps it was. The assumption was clear that that distant sale was in the natural market territory of another mill so that he had to make a freight-absorbing sale in order to reach into that market.

Mr. Bond: You said "distant mill." You meant "distant market"?

The Witness: Distant market. I beg your pardon—distant market.

By Mr. Wooden:

43745 Q. Would you say that it is natural or unnatural from an economic standpoint for the same kind or quality of goods to move from deficit areas into surplus areas?

A. Well, if you were speaking of a condition approximating perfect competition with a large number of sellers and there are certain areas that are looked upon as being the producing or surplus areas, others as consuming, or deficit areas, it would not be natural to expect that the goods would move from the consuming areas into the producing areas.

Q. You mean, when you say "consuming areas," you mean consuming areas that are also productive areas; but had a deficit in production for their own use?

A. Yes, I would accept that.

Q. Such a phenomena would be economically equivalent of water running up hill, wouldn't it?

Mr. Bond: Well, we are getting close to "coals to New Castle."

Trial Examiner Norwood: I think he may answer that.

A. No, I would not know what the economic equivalent of water running up hill would be.

By Mr. Wooden:

Q. Then, you do not know what the economic equiva-

lent of an unnatural flow of goods is from an economic standpoint?

A. Oh, now, we are—yes, I think I understand what that is, and if that is just what you mean to say, I would agree that that would be an unnatural flow of goods.

43746 Q. Now, referring to your testimony on pages 43089 and 43090, where you testified that you would compare the delivered prices rather than the mill nets in determining whether discrimination existed,

Now, suppose that the price of cement delivered to a dealer in Cincinnati is $2 a barrel, and delivered to a dealer in Louisville is $1.75 a barrel, is 25 cents the amount of the discrimination between them?

A. Using the term "discrimination," as I have used it?

Q. Yes, you compared the delivered prices,—ascertained the discrimination.

A. But I also said that I would regard as economically significant discrimination,—discrimination that unnaturally affected the position and relation of competitors, and also that the difference in prices were not to be explained by meeting competition in good faith.

Q. Assume that the dealers in Louisville and Cincinnati are in competition in intervening territory.

A. If you assume that two dealers are in competition with one another, and that different prices are made to them, which were not made in good faith to meet competition, that would conform to my definition of economically significant discrimination.

43747 Q. No, I mean the same railroad that served Cincinnati and Louisville had a rate in effect which gave a 25-cent advantage to Cincinnati as against Louisville dealers. I am asking you whether, if you 43748 found a difference of 25 cents in the delivered price, that you would say that that is the amount of the discrimination or the amount of the difference—the amount of the discrimination for which the manufacturer has any responsibility?

A. Well, there are several aspects of that thing. In the first place, I would not be able to agree that the differences in price made by the railroads was discriminatory without knowing many more facts, and presumably if it exists under the approval of the Interstate Commerce Commission it is not discriminatory; that is my understanding.

Q. Suppose it was not—

Mr. Bond: Did he finish?

The Witness: Well, all you are saying, then, however the rate comes about, you have got two different railroad rates, and a different railroad rate from the point of manufacture to Louisville than you have from the point of manufacture to Cincinnati. Well, that is all a mill—

By Mr. Wooden:

Q. In determining whether or not there is any discrimination there for which the manufacturer is responsible, would you nevertheless look only at the delivered price for which the railroads are partly responsible?

A. No.

Q. Just why?—

43749 A. I would look to the relative mill net as indicating the return to the mill.

Q. Now, even under your theory that discrimination,—economically significant discrimination,—exists, on and where one buyer, one dealer, is in competition with another dealer, might there not be some significant discrimination from that standpoint in the case where one dealer diverted or attempted to divert a shipment from his town into the town of the other dealer?

A. Discrimination on the part of whom, Mr. Wooden? Discrimination must be something done by some one person. Now, who is he?

Trial Examiner Norwood: Well, would one dealer be discriminated against in the matter of price?

The Witness: Well, my concept of discrimination, Your Honor—

43750 Trial Examiner Norwood: In the course of the entire transaction, without fixing the responsibility, would one of those dealers be discriminated against?

The Witness: I do not think that merely because one dealer gets a different—might get a different price than another dealer would receive, that that would imply—necessarily imply—discrimination.

Trial Examiner Norwood: Well, if because of diversion one dealer's competitor gets his goods at a considerable reduction, puts him to a competitive disadvantage, that would be some sort of a discrimination, would it?

The Witness: No, sir; I would not think so,—not necessarily, just on the statement of your facts.

By Mr. Wooden:

Q. Assume a town where a dealer had a delivered price of $2 a barrel resulting in a mill net to the mill of $1.50 a barrel, assume that there is another town not far away, occupied by another dealer, who is paying delivered $1.75 a barrel, and with a mill net to the manufacturer of $1.25 a barrel; now, if that second dealer diverts or attempts to divert into the first dealer's town, after making a purchase on the basis of the lower delivered price, and the lower net, isn't the other dealer into whose town the shipment is diverted discriminated against even under your theory, that there must be injury to a competitor in the buying end?

43751 A. Discriminated against by whom?

Q. By the manufacturer.

A. Do you mean if the—

Trial Examiner Norwood: Well—

Q. Isn't the manufacturer in that case getting a higher mill net from the dealer into whose town the shipment is made or diverted; isn't that right?

A. Than what?

Q. Than he is getting from the other dealer?

A. Well, that was true before the diversion took place.

Q. It just emphasizes my point all the more, hasn't he then discriminated in the sense that you say discrimination would exist, namely, that the dealer in the town with the higher delivered price and the higher mill net is injured by that diverted shipment?

A. Well, he may be injured, but if you—unless you can assume that the manufacturer is a party to this, and willingly permits this sort of thing, then I do not see how you can say that the manufacturer has discriminated against the dealer in Cincinnati. The manufacturer, as I see it in this situation, has quoted a lower mill net to a dealer in one town than he has to a dealer in another town. Presumably, well, for any one of a number of reasons, perhaps to meet competition. Now, the fact that perhaps without his consent some of that cement gets over into the other town, I would not think would mean that

43752 he was discriminating. At any rate, it becomes, it seems to me, a legal question, can you hold this mill responsible for doing a thing which they perhaps did not approve?

Trial Examiner Norwood: Well, the thing to consider

is what the effects are without regarding—without regard to fixing the responsibility for it, as to whether or not a set of circumstances operates to discrimination as against one dealer.

The Witness: Not, with respect to Your Honor's way of putting the thing.

Trial Examiner Norwood: Yes.

The Witness: Nevertheless, I cannot think of discrimination except as it is one, involves one person, seller doing different things to different buyers. The fact—

Trial Examiner Norwood: The set of circumstances would not operate to a discrimination in favor of one and against another, you would not describe it as discrimination there?

The Witness: I would not describe that as discrimination, but I hesitate to make that answer because it seems to me I am right into a legal question. The manufacturer, it is true, is supplying this cement, and it is going to two different buyers in the same town at different mill nets, but the manufacturer is not consenting to that.

43753 Well, now, you are getting down to a question of allotting blame and legal responsibility. I do not know anything about that.

Trial Examiner Norwood: No. You are discussing responsibility there. I was asking you with respect to effects as to how you would classify the effects.

The Witness: The effects would be the same as though the manufacturer were discriminating between those different buyers.

By Mr. Wooden:

Q. Do I understand you to say that the effect would be just as though the manufacturer had discriminated between those two buyers?

Would you regard this attempt to prevent diversion by manufacturers in any way as being an attempt to protect themselves against one of the repercussions from their discrimination?

Mr. Bond: I object. It is asking him to speculate.

Trial Examiner Norwood: I think what he regards there—

Mr. Bond: The motives,—asking him to speculate about the motives of these producers in trying to prevent diversions—

By Mr. Wooden:

Q. All right. Wouldn't the effect, in your opin-
43754 ion as an economist be that of protecting the manu-
facturer against one of the consequences of his discrimination?

A. Do you possibly mean by "consequences," the possibility of legal action being taken against him?

Q. No, I mean the possibility that the dealer in the town to which the shipment was diverted would get on his neck.

A. Yes, I think that would probably be a reason that would—a factor that he would have in mind. I think I said in direct examination that naturally any manufacturer is going to object to having to accept, to being forced to accept a—as to the trade of a particular town—a lower mill net than he intended to make to that town. He may have made a low mill net to another town because of certain—

Trial Examiner Norwood: Well, that is discussing it.

The Witness: All right.

By Mr. Wooden:

Q. Doctor, in your concept of the basing-point system in cement as described in the hypothetical question, coupled with your concept of price leadership in the industry, isn't it necessary that every seller do exactly what the leader does in order to have identical delivered prices?

Mr. Bond: Will you change that to say "concept of leadership in industry"? You say "in the industry."

Mr. Wooden: Yes, I meant "in the industry."

Mr. Bond: You meant in the cement industry?
43755 Mr. Wooden: Yes.

Mr. Bond: Then I object. The witness is not a factual witness about the facts of leadership in this industry.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: I think that is an economic question.

Mr. Bond: Just take out the word "the." All the Professor talked about is leadership in industry. Now, he is asking about the fact of leadership in this industry.

Trial Examiner Norwood: The objection is overruled.

A. Well, I do not recall having answered questions directly based upon the question of assumption of fact con-

cerning leadership or based upon my understanding of facts in this particular industry, but I think we can get to the point of the question; you are asking, as I understand it, whether complete following, perfect following of price leadership is necessary in order to bring about identity of delivered prices?

By Mr. Wooden:

Q. No, I did not ask that.

A. Pardon me.

Mr. Wooden: Will you read the question, please?

Trial Examiner Norwood: Read the question.

(Question read.)

43756 A. That is the thought I was trying to express. I was not successful. No, it is not necessary that every seller should do what a leader does in an industry in order to obtain identical delivered prices. I have explained several times in my opinion identical delivered prices arise out of other factors than that.

By Mr. Wooden:

Q. In other words, price leadership has nothing to do with it, and the basing-point system has nothing to do with it?

A. Has nothing to do with the existence of identical prices. Price leadership might conceivably have something to do with whether prices were high or whether they were low, or a number of other things you may assume, but given well-informed buyers, a homogeneous product, freedom of choice to select between several alternatives, you have to have identical prices, anyway.

Q. Will you say that if some price leadership in the cement industry, a base mill for instance makes a change in its price, that is not followed by a competing mill at certain delivery points, that then the prices will still be identical?

A. The prices that are paid at that point will be identical, yes. I can imagine that you might have two mills in there asking different prices, they would not get them, if your buyers are well informed and prices that are merely asked are not truly prices, they are merely quotations.

Q. Do you mean to say that there would be two 43757 different asking prices in that locality, anyway, wouldn't there?

A. Under the assumption that you have made that there would be different ones, there would be.

Q. And wouldn't you expect different asking prices to cause a difference, momentarily at least, between the selling prices?

A. I think I made that qualification in my general answer yesterday, that at a time when prices were changing there would be a moment of time in which there might be two different prices in the same market.

Q. But as I understand it, you think there would still be identical prices even though the price leadership of a base mill were not followed?

A. Yes, sir; always making this exception, I do not want to take the time to go through all of the exceptions all of the time, always the moment of time when a price is changing then one may be at one level and the other at another level, but that is not likely to exist very long.

Trial Examiner Norwood: Do you mean quotations changing?

The Witness: No, at the time—well, suppose a price is to be changed, Your Honor, in any market, unless the different sellers change at exactly the same instant you would have in that short period of change one of them selling at one price and one at another, but I waive that for the purpose—

43758 Trial Examiner Norwood: They may not be selling, and they would just be quoting?

The Witness: Well, they may actually be paying it. I can imagine an interval over a short time, the news had not gotten around to the buyers the new price was in effect, they might in those few moments buy from one person at a higher price than another, but that would be a very short-lived thing. I am willing to leave it out.

By Mr. Wooden:

Q. Well, since I must pursue it a little further, I will ask you this question: Do you mean to say that the price leadership of a base mill in the cement industry may be disregarded and still have identical price quotations at a given destination?

43759 A. If you mean by the price leadership of a base mill being disregarded, you mean this situation that a base mill changes its price at the mill so that that price, that base plus freight, gives a different delivered price at some point, and that other sellers do not meet that price immediately, then your question is would you have different price quotations. Well, I assume from that almost by

definition that you would have different price quotations providing both mills continued to quote. They might conclude that since the price quotation they had in mind was higher than the other, there was no point in quoting it. Assuming they did quote it would be different.

Q. Don't you recognize that price quotation is an important aspect of price competition as well as the actual price in the actual sale?

A. Well, of course, price quotation is an important factor in competition; yes, sir.

Q. Important factor in price competition, too, isn't it?

A. Yes, surely.

Q. On page 43093 you testified that it was an economic necessity that the offers of various sellers shall be equally attractive to the buyer.

43760 A. Well, in order for them to be effective—that is, to be accepted, stand the chance of being accepted, —I perhaps did not qualify it. Of course, it is perfectly evident that one man can stand down on the street here and ask a higher price for the Washington "Star" than the newsboy standing right next to him, but the price that will be paid is not likely to be different in a competitive market.

Q. Why is it a necessity for the complete offers of sellers including the price, service, and other respects, be equally attractive to buyers? What is the economic necessity for it?

A. Well, for them to be effective they have—I mean, to have a chance of being accepted, assuming that the buyers are well informed, it seems to me the answer is obvious, the one making the poorer offering would not have his offer accepted.

Q. Isn't that a common every-day occurrence, that the buyers find a difference in the attractiveness of sellers' offers?

A. Well—

Q. Shouldn't it be so?

A. Not commonly so when the product is a homogeneous product.

Q. In other words, you come back to the assumption of perfect competition, too, do you not?

A. Oh, no.

Q. No?

A. No.

43761 Q. Doctor, referring to your testimony on page 43093, would you say that if there are some important differences in the offers made by sellers to buyers with regard to the classification of trade which the buyers may handle and that trade which the manufacturer may handle direct with the consumer, that such differences might be weighed against the fact that all other elements in the offer, including price, were the same?

A. Weighed by whom, Mr. Wooden? Who is it that is going to consider it?

Q. Well, wouldn't it be weighed by the buyers and also by the sellers?

A. That the buyers would take that into account,—they would weigh that, so to speak. I think I have my previous question and answer in mind. Now, if I could have this present question read—

Trial Examiner Norwood: Read it.

(Question read.)

A. Why, yes, I would think that that might be a factor that buyers—I assume you mean the dealers—

By Mr. Wooden:

Q. Yes.

43762 A. —would take into account. If I understand the import of the question, it is that if various manufacturers make different classifications of the trade which they, themselves, will handle and which they give to the buyers, then would the buyers take that into account.

Q. Yes.

A. Yes, I think they would.

Q. Would you expect that if there were important differences in the classification of such trade by the different sellers that it might have a disturbing effect upon price?

A. I would not see that it would have a disturbing effect upon price; I would see that it would have an effect upon the amount of patronage that one seller might get in that town, but not upon his price, as far as I could see.

Q. You could see no tendency there for one manufacturer whose classification of trade was less satisfactory to the dealers to offset it by a concession in price?

A. Well, he might conceivably do so. There would be other possible results in which some dealers would not be particularly interested in the class of trade which they were not to get, and other dealers would be interested in that, and in that case the price might well remain the same,

the one group of dealers buying from one manufacturer and another group of dealers buying from another.

Q. Would you expect the same policy as to classi-
43763 cation of trade upon different sellers even though the amount of trade classified varied substantially among different classifications by different sellers?

A. Well, that seems to me to become one of those psychological questions, but—I could not be sure about that, but I would not be surprised to find a substantial uniformity in policy as to division of trade. That is rather common in American industry.

Q. You say you would not be surprised to find substantial differences in—

A. Substantial uniformity.

Q. Would you be surprised to find substantial differences?

A. Well, now we are getting to an evaluation of the word "surprised."

Q. As an economist, of course.

A. I can't say as an economist without knowing more facts than that just how important that factor is, what other factors are involved. I can't evaluate the various degrees of surprise that I might have under two situations.

Q. Referring to economic surprise.

A. Well, that is—(laughter)—

Q. Now, referring, Doctor, to your testimony on page 43094, lines 10 to 12, where your said, "other things being equal, the higher the degree of competition the higher the degree of uniformity I will expect to find,"—do you see that?

43764 A. Yes.

Q. Would you, therefore, conclude that when delivered prices are identical to the extent of seven or eight decimal points per barrel that that means a higher degree of competition than if they were an even cents per barrel?

A. We were speaking at that point, I believe, Mr. Wooden, about the uniformity of marketing practices, such as discounts, classification of business, and so on. But you are applying my answer to an entirely different point than it was originally applied to.

Q. Doesn't your answer apply, as stated there, to price?

A. No, sir. I think if you will see the question begin-

ning on the bottom of the previous page that this line of questioning deals with marketing practices, such as discounts, classification of business, and so on.

Q. Yes, I see, strictly speaking, it does, Doctor, but I am now asking you whether you would say the same thing with regard to price.

A. Now, just what do we mean by the same thing?

Q. That the higher the degree of competition the higher the degree of uniformity you would expect, other things being equal.

A. That comes back to my same old point, that I expect uniformity of price actually paid to arrive out of the self-interest of the buyers if they are well informed
43765 and have freedom of choice between alternative sources, and you are dealing with a homogeneous product, that it arises out of that primarily.

Now, it is true that those assumptions that I have made are included in the assumptions of perfect competition; so that when you have those assumptions you do have identity of price. It is not necessary to assume all of the other conditions of competition, nor if the other conditions of competition become even stronger it would not have any effect of creating any greater uniformity of price.

Q. Then, I infer that you consider the price competition which you have undertaken to explain here is in your opinion perfect competition.

A. That I have undertaken to explain where? In the last few answers, you mean?

Q. I mean in your testimony here generally.

Mr. Bond: You mean as existing in this industry?

Mr. Wooden: Yes.

A. Well, obviously not. I have said all the way through that this industry is an industry characterized by imperfect competition.

By Mr. Wooden:

Q. But haven't you attempted to attribute to this industry the existence of competition and a high degree of competition because their prices delivered were identical?

43766 A. No, sir. I would not rely upon the identity of delivered prices to establish a high degree of competition.

Q. Well, haven't you done that in your testimony?

Haven't you testified that under a condition of intense competition prices become uniform?

A. Prices become uniform under the conditions which I have described so many times, conditions affecting the buyers, their freedom of choice, and so on, and does not require intense competition on the part of the sellers to bring that about. It does require the degree of competition which is implied in my statement, that the buyer has alternative choices. There must be more than one seller there who is willing to sell the product.

Q. Doctor, I still have not had an answer as to whether your statement to which I have directed your attention on page 42094 is also applicable to price.

The Witness: I feel I have answered that question.

By Mr. Wooden:

Q. Can you answer it "yes" or "no" and then explain all you want? You have given an explanation, but you have not answered the question.

A. The existence of some of the elements of competition is necessary to explain uniformity of price, but
43767 having those minimum elements then a higher degree of competition would not lead to any greater uniformity.

Does that answer it?

Q. Not exactly.

A. I can't do any better.

Q. You can't answer it "yes" or "no"?

A. No, sir.

Perhaps I could say this, to try to be as cooperative as possible, that once your had gone past those minimum requirements, then any increasing degree of competition would not lead to an increasing degree of uniformity. That is as clearly as I can put it.

Trial Examiner Norwood: You are assuming complete uniformity at the start, aren't you?

The Witness: Complete uniformity, if you have these minimum conditions of informed buyers and their freedom of choice, and so on.

Trial Examiner Norwood: Well, it could not be any more uniform than it is uniform.

The Witness: You have the point exactly.

By Mr. Wooden:

Q. Were you assuming complete uniformity to the extent of seven or eight decimal places in your answer?

A. If the buyers are well informed, they are not going to pay more, whether by seven decimal points or
43768 something else, for one product than for another.

Q. Assume that you had a number of sellers who were well informed, and one buyer asking for bids under sealed cover, then would you expect identity to the extent of seven or eight decimal places?

A. Under those circumstances the price paid in that market would be uniform.

Q. Even if the prices quoted in that market were under sealed bids?

A. That leads to an entirely different matter. I have indicated, I think, in my direct testimony some reasons that might explain the existence of identical sealed bids.

43769 Q. Even to the extent of seven or eight decimal places?

A. Well, if they are identical to one decimal point, they can be to seven or seventeen.

Q. It does not make any difference to you? What is the difference between identical to a cent or identical to several decimal points beyond a cent? Any?

A. I would not think there is any difference.

Q. Suppose you have fifteen decimals—

A. If the forces of the market tend to bring about—do bring about identical bids, then it seems to me the case is not made stronger by saying they are two decimal points instead of one, or three instead of two.

Q. Wouldn't that indicate to you an increasing degree of perfection in competition?

A. Perfection in competition does not require that all bids shall be the same. You are talking about a different thing now. I was previously talking about identity of price arising out of these various factors.

Q. All right. Suppose an order is placed at that identical bid or quoted price and then it is paid, then wouldn't you say that the greater the number of decimals the greater the perfection of the competition that resulted in that price?

43770 A. No, I would not think that the number of decimals is particularly significant.

43771 Q. My question is this: Under the conditions outlined in that hypothetical question which you answered on page 43106, lines 2 to 10, wouldn't the refusal

to permit diversion under those circumstances operate to protect the delivered price at the place where it was higher?

A. Yes, it would have that effect. It would protect the higher mill net return on the business to the mill.

Q. Even though in protecting the higher delivered price at the one town the manufacturer were content with $1.20 net from one dealer while asking $1.50 from the other?

43772 A. Well, what it would come to is that he would accept $1.20 from both. Naturally he would not like to do that. He does not have to.

Q. In other words, it would tend, if permitted, to bring down the delivered price in the two towns to the same point?

A. It would bring down—the delivered price, you say?

Q. Yes; or would you say it would tend to bring down the mill nets only relative to the same point?

A. If I follow through the figures correctly, I do not see how it would tend to bring the delivered price to the same point. The delivered price is, I believe, in the assumption; that is, they were $2, were they not? Now, it would have the effect of bringing the delivered price at town "A" down to $1.70, would it not? So, it would make different delivered prices in the two towns if the diversion were permitted and became common.

Q. I do not see any assumption in the hypothetical question what the delivered price of both towns is. That is, it assumes the same delivered price.

A. Yes.

Q. That is right.

As a matter of fact, wouldn't you expect the diversion to take place ordinarily where the delivered price in one town was substantially higher than in the town where the diverting dealer was located?

43773 A. No, because of the conditions described in the case. Here somebody has found a smart way of obtaining cement on a different mill net and adding that to a different freight than was intended to be added to it, and thus come out to an advantageous price.

Q. Somebody has found a smart way to get cement into a certain destination at less than the delivered price applying to that destination?

A. That is right. To put it another way, that somebody has found a way forcing this manufacturer to grant a price to town "A" which he had for special reasons, presumably the presence of different competition, granted to

town "B". He grants a special price to town "B"—I mean he grants a price based upon—let me look at it another way: He accepts a lower net return in order to get into market "B". He does so presumably because he has to do that in order to get in there. Now, the dealer of this person who is engaging in the diversion is trying to force that same mill return to be applied to town "A".

Q. The manufacturer, Doctor, is simply trying to maintain his delivered price structure?

A. It seems to me that is just attempting to place a label on this practice. It is clear that the manufac-
43774 turer starts with a situation—that is, his sales to town "A" in which he is getting a return of $1.50. Now, presumably he would like to get that return in town "B" also. But when he gets into town "B" he runs into a competitive situation which requires him to sell at a price of $2, even though he has a freight rate of 80 cents, thus would leave him only $1.20. Now, presumably he does that regretfully. He accepts that rather than to fail to get the business.

Q. Does it appear to you as an economist that the effect of preventing diversions under those circumstances is to prevent the manufacturer's price structure?

Trial Examiner Norwood: You want to answer that "yes" or "no"? Is that one of the effects it has?

A. Yes, it has affected the price structure in the sense of the relation between prices in the different towns and of the price which this manufacturer was intending to charge in town "A" and is now being prevented from doing by this practice.

By Mr. Wooden:

Q. Now, when you testified on page 43114 that you would expect different bidders on a Government bid requested on an f.o.b. mill basis,—you would expect the different bidders to determine their f.o.b. mill price by taking the commercial price and deducting from that the freight rate to the point of delivery, did you mean by that that you would expect them to deduct from the com-
mercial price at destination the commercial freight
43775 rate to that destination?

A. I was not in that answer distinguishing between different kinds of freight rates.

Q. Well, then, let me ask you now: Under the conditions stated, where the Government asked for bids f.o.b.

mill, would you expect different bidders to determine their f.o.b. mill price by taking the commercial destination price and deducting from that the commercial freight rate to the destination?

A. I would expect them to consider the freight rate which they anticipated would, when added to the f.o.b. price, get their cement into the market at the commercial price.

Q. In other words, you would expect them, then, to deduct the commercial freight rate to get their f.o.b. mill quotation?

A. I would expect them to deduct the freight rate that they anticipated the Government was going to have to pay in this case, because the assumption refers to the Government.

Q. Now you change it.

A. No, I do not think so. I said that I expected them in the first instance—well, the record will stand for itself. I do not think I changed it.

Q. Why would you expect them to do other than deduct the commercial freight rate to the destination in question?

A. Because the combination of factors that have been mentioned here in the assumptions is their intention to bid the commercial price at the point of delivery. Now,
43776 if they are told that they are not to bid a delivered price at all, then I would think that they would approximate that by taking the commercial price and subtracting from that the freight rate that would have to be paid to get the product to that market.

Q. Even though they had to estimate it without knowing what it was?

A. Well, of course, if they did not know what it was, then naturally they would have to estimate it.

Q. And you would expect them to estimate it; would you?

A. If they did not know it.

Q. Would you expect the estimate made by different ones to turn out to be exactly the same in the absence of their knowledge as to what the actual freight rate was?

A. Well, we are getting into pretty speculative matters. Theoretically, of course, it is not necessary that we should know what the actual freight rate was. If they were all taking somebody's word for what the freight rate
43777 was, then you would get the same results.

43779 Washington, D. C.,
Monday, September 16, 1940.

43780 CLARE E. GRIFFIN thereupon resumed the stand and testified further as follows:

Cross-Examination (Continued) by Mr. Wooden.

43783 Q. Did you have any factual information regarding the use of a so-called control clause in the cement industry in connection with land-grant rates?

A. No, sir.

Q. Would your testimony regarding what you would expect in the case of bids on Government business, Federal Government business, be changed or affected in any way, if you were to assume that the Government was not permitted to deduct the commercial rate of freight from the delivered price, but was required to deduct only the land-grant rate or special rate if it were lower than the commercial rate from the quoted destination price?

A. No, I do not think so.

Q. Would your testimony be affected in any way, if you were to assume that as a result of that, of such a requirement, and coupled with the assumed fact that there are differences between the actual land-grant rates paid and the estimated amount used in figuring the de-
43784 livered destination costs that sometimes that operated to give the manufacturers a higher mill net on the Government business than it did on the commercial business at the same delivered point?

A. No, I think that would not have affected my answer. I think I said in the testimony, the last session, that it seemed to me the important thing was the rate that was anticipated.

Q. You mean anticipated they would use the same estimated land-grant rate by different competitors?

A. I can well imagine that might happen.

Q. Would you expect that to happen under conditions of free competition?

A. Well, it is quite possible if the people interested in that rate secured their information, say, from the railroads and secured the same information that would lead to the use of the same estimate.

Q. Would your testimony be affected in any way if you were to assume that after obtaining the information of the estimated rates from the railroads that competitors exchanged that among themselves for their use in bidding?

A. Well, I could conceive that they might do that.

Q. And still be acting, as you would expect competitors normally to act?

43785 A. Well, when one says as we would expect competitors normally to act, that is, as I think I pointed out several times before, that there is no one normal behavior of competitors under all circumstances. In the industry described as it has been, and the assumptions made; I would not think that would be out of the question; I would not think it would be particularly abnormal.

Q. Well, haven't you been undertaking to testify here that the way cement producers act is the way competitors would normally be expected to act?

A. Competitors in manufacturing industries, and particularly in manufacturing industries having some of the basic characteristics of these industries, I think I made it clear time and again that I did not mean that I would expect a group of automobile manufacturers to act in precisely the same way as a group of—as individual wheat farmers would act. That is, the way in which competitive forces work themselves out in different industries, depends upon the characteristics of the industry.

Q. Well, have you drawn your conclusions of the existence of normal competition in the cement industry from the way that industry is carried on, or have you drawn your conclusions as to what is normal competition from the way the cement industry is carried on?

A. I have drawn my conclusions by comparing
43786 what was done in this industry with what it seems to me would be natural in a manufacturing industry having some of the general characteristics of this industry, such as high overhead cost, for example.

Q. Would your testimony, Doctor, be affected in any way regarding the subject of Government purchases on sealed bids, and the use of land-grant rates, if you were to assume that cement manufacturers have conceded to the dealers the purchases made by Government emergency relief agencies and that also assumed that that resulted sometimes in the Government being unable to get the benefit of land-grant rates because it could not take title

to the cement at the mill because the dealer took it instead?

A. That is a very detailed question in which one to make an intelligent answer ought to know a great many more facts than are presented here, but the practice of manufacturers giving credit to dealers for sales made by manufacturers in that dealers' territory is not at all uncommon in American industry, and I can well imagine it growing out of normal competitive forces.

Q. I was not assuming the case where they gave the dealer credit for such sales, but where they permitted the dealer to make the sales and handle the sales themselves instead of selling it direct.

A. That is just a question of how they want to classify the trade. It would be nothing unusual, I think,
43787 looking at American manufacturing industry, in general.

43788 Q. Doctor, do you recognize that dealers in cement, like other middlemen are primarily interested in being on a price equality with competitors in their purchase, in order that they may not be handicapped on the re-sale of the goods?

A. Well, I suppose any dealer in cement, like any other middleman, would like to have a lower price than his competitors, but normally he, or, frequently, he recog-
43789 nizes that that is not possible, but I agree that the matter in which he is interested, is the relation, relative prices paid by him and by competitors.

Q. And the thing that is most likely to arouse his ire and lead him to object to the manufacturer is that if he finds a manufacturer is giving to a competitor a lower price than he is getting; is that right?

A. I assume that that would be true, yes.

Q. Why do you think, then, as you testified on page 43119, that the dealers would complain to the manufacturers if they found the manufacturers making a lower price to the Government on business which the dealers could not hope to get anyway?

A. Well, dealers are going to take any excuse that they can for asking for lower prices, and if these lower prices are granted in a particular area by the manufacturer it gives rise to that sort of demand.

Q. Even though the element of competition among dealers in the re-sale of the goods is not present?

A. Yes, of course the demand would be, perhaps, stronger if the element which you just described were present, but it would exist, anyway, I think.

Q. Do you see any reason as an economist to assume that both buyers want identical delivered prices?

A. Do you mean most middlemen buyers?

Q. Well, separate the two classes differently
43790 for different classes.

A. Yes, I can see a number of reasons why they might want that.

Q. Are you speaking now of the middlemen?

A. Yes, sir.

Q. And I assume the reason would be that because in competition with other middlemen they would not want them to have any advantage over each other?

A. Yes, the variation in price paid by the different merchants in the same community leads to disorganization of the market, uncertainty on their parts as to what the as to the prices that competitors are paying, and they would not like that.

Q. Can you advance any other reason, so far as middlemen are concerned, than the one you have just described?

A. Well, perhaps I could state more specifically that any one middleman would like to be assured that other middlemen with whom he is competing are not buying on a more advantageous price.

Q. Can you suggest any other kind of a reason than that in the case of a middleman?

A. No, I think that is the main reason.

Q. Now, when it comes to the buyers who are not middlemen and want to buy the cement to use instead of to sell, would you say that the same considerations apply, —that they also want identically delivered prices?
43791 A. You mean the final consumer?

Q. Yes, people who are not buying to re-sell.

A. I think the final consumer is more concerned with the level of price than he is with relative prices, although when this final—it depends entirely on who this final user is; if the final user is himself a business man in competition with someone else, and the cement is an element of cost in something that he is producing, then he would have some interest in relative prices. I do not conceive, however, from what I have been told in the hypothetical questions that cement would ordinarily play a sufficiently

important part as a cost element in that sense, so that that would be really of any real importance. I mention it as a theoretical possibility.

Q. Well, do you say that the consumers who buy for their own use direct from the cement manufacturers, that you would expect them to want identical delivered prices?

A. Consumers often do want identical prices. I was looking at the purely rational aspect of it, that they ought; I think—I think that if they were acting purely rationally that generally consumers are interested or should be interested in their own self-interest in the level of price primarily rather than uniformity. However, they very often assume that if some other person is getting a lower price than they are getting, that that means that they are paying too high a price, and that leads them to demand uniformity; that is, it leads each one to demand as
43792 low a price as is given to anyone else. I think that is a commonly observed phenomenon.

Q. Isn't the level of price pretty directly and substantially affected by the question whether there is uniformity in price of different sellers?

A. I do not see just how it does.

Q. You do not think that uniformity in prices by different sellers tends to keep up the level of price?

A. No. I think as I have explained several times that uniformity of the delivered price is a natural result to expect from the existence of a group of buyers who are well informed, and who have the option of buying from different sources, a homogeneous product. Now, the force that keeps this price identical or uniform is the fact that an informed buyer will not pay more than the lowest price which is offered in that market, so the price comes to uniformity at the level set by the lowest price offered.

Q. You do not recognize, then, I take it, that lack of uniformity in price among competing sellers tends to reduce the price level?

A. Oh, one could not generalize on that. The mere fact of lack of uniformity does not tend to reduce the price level.

Q. You say it does not?

A. I say it does not. I say the mere fact,—in my answer a moment ago, I should have added, although
43793 I think perhaps it was understood, price would come to be the price offered by the lowest offerer, assum-

ing that that offeror can supply the amount of the product desired.

Q. Now, Doctor, in one place in your direct testimony you stated that by virtue of definition the sales of a non-base mill were sales that were not made in competition, that is, they are accepted prices that someone else has initiated.

Mr. Bond: May I have the page?

Mr. Wooden: 43006.

Mr. Bond: May I show it to the witness?

Mr. Wooden: Yes.

Mr. Bond: I call Your Honor's attention to the fact that the sentence read is one of those on which we have proposed a correction to the stenographic record, and we are waiting for the assent of Commission's Counsel to the correction. With the correction the sentence is very different.

Mr. Wooden: What is the correction you wish?

Mr. Bond: The sentence would then read: "Now, by very definition, the sales of a non-base mill are sales that are made to meet competition."

Mr. Wooden: In other words, that would make it the opposite of what it is now?

Mr. Bond: The word "not" did not belong in there.

Trial Examiner Norwood: What do you say 43794 about that, Doctor?

The Witness: Well, certainly the statement as read to me by Mr. Wooden came as a distinct shock; I do not think I ever said that the—

Trial Examiner Norwood: Go ahead.

The Witness: What I— Shall I continue?

Trial Examiner Norwood: Go ahead.

The Witness: What I said was, "Now, by very definition the sales of a non-base mill are sales that are made to meet competition." That is stating an obvious fact.

By Mr. Wooden:

Q. Are you stating what you said or what you intended to say?

A. To the best of my belief, that is what I said. I never would have said the other knowingly.

43802 Q. Now, Doctor, taking up the subject of a comparison between the method of marketing employed in the cement industry, as you understood it from the hypothetical questions, you touched upon the possibility of an

historical comparison between the method employed and something that may have proceeded; do you recall that?

A. Yes, sir.

Q. Would you say that such a historical comparison would be desirable if it were possible?

A. I believe at that point,—correct me if I am mistaken,—I believe at that point we were talking about the question of lessening competition.

Q. I believe so.

43803 A. Well, yes, a historical comparison would be desirable—

Q. Wouldn't it be quite important?

A. I was going to say it would be quite desirable if you could find two different periods, in which the other conditions were substantially the same—that is, as to size of the industry and matters of that sort, and in which you had two different methods of marketing prevailing—then the comparison would be considered helpful, I think, by any student who was trying to determine whether the existing, the present, had had the effect of lessening competition.

By Mr. Wooden:

Q. Did you have before you any historical data from which such a comparison might be made?

A. I do not think so, because it is my understanding that the method of marketing now employed has been used for a considerable number of years, and, therefore, that any period in which it was not in existence would in—would have so many different circumstances and

43804 conditions that it would not provide a fruitful basis of comparison.

43807 Q. Doctor, I am now reframing my last question, to this effect:

In your direct testimony when you compared the economic merits of the method of marketing employed in the cement industry with the uniform f.o.b. mill base method, why did you not take into account such departures from uniformity in mill base price as might be represented by due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing meth-

43808 ods or quantities in which cement is sold?

A. You mean why did I not consider as an alternative that the mills might adopt a practice of quantity discounts? Is that what your question comes to?

Q. That is one of the items. I included others in the question, as you should note.

A. It does not seem to me, sir, that the option of any—of a consistent policy of quantity discounts would change the picture in any important respect—in that particular one.

Q. Do you mean that if some mills gave one quantity discount from their otherwise uniform f.o.b. mill price, that other mills would necessarily make the same quantity discount?

A. With a homogeneous product of this kind and the other characteristics of this situation, I should expect them to do so.

Q. Well, as a matter of fact, Doctor, when you compared the uniform mill base method of quotation as being something from which there were no departures, the effect of that, wasn't it, economically to assume that there were no differences in cost of manufacture, sale or delivery resulting from differing methods or quantities in which cement is sold?

A. No, I do not think that implied that.

Q. Well, since you did not treat in your direct testimony a comparison between the present system and the
43809 uniform mill base system with these exceptions, I will ask you how you would compare the two systems with these exceptions in the uniform mill base method.

A. Those exceptions again are—just what would you like—

Q. The differences in cost of manufacture, sale or delivery resulting from the differing methods or quantities.

A. And the question concerning them— I am sorry. Will you read that, please?

(Question read.)

A. As I have said, I do not think it would make a significant difference if mills did adopt the policy of quantity discounts.

Q. And is your testimony the same regarding the other items that I included in my question?

A. I understood the others were included under the head of quantity—variations in cost arising out of quantity, variations in cost of manufacture, cost of sale, and so on, arsing from quantity.

Q. Differing methods or quantities.

Well, to aid you further, if I can, do you mean to say

that your testimony is the same regarding the comparison between the uniform mill base method without such exceptions as those I enumerated as it would be if you included those exceptions?

Mr. Bond: Now, if Your Honor please, the witness has made thirty or forty answers about comparison. Is
43810 it fair to ask him as a lump, taking all those together? Why not take them one at a time in fairness to the witness?

Trial Examiner Norwood: Well, I think that the witness can answer this.

(Pause.)

The Witness: If I may have the question—

Trial Examiner Norwood: Read the question.

(Question read.)

A. Well, a number of questions were asked about these two plans and a number of answers were made.

To take one of them, I recall that I said that in my opinion a uniform f.o.b. mill plan would result in the division of markets in the sense that one mill would be the seller within one territory. I do not think that conclusion would be affected if we assumed that there were variations in costs arising out of quantities purchased and that mills quoted prices which reflected such variations in costs. The strong tendency in an industry having a homogeneous product and the other characteristics of this industry would be for such selling policies to become uniform throughout the industry.

By Mr. Wooden:

Q. Wouldn't you think that there would be some probability of concessions of a sporadic character arising out of these exceptions which I enumerated?

A. I do not conceive that the exceptions would
43811 be of a sporadic character. It seems to me that the reason—

Q. I mean not of a sporadic character in the exceptions I enumerated, but sporadic character of mills going into each other's territory.

A. All right, take that definition. I would not think that the forces that would lead one mill to desire to go into another mill's territory on the freight-absorbing basis would be of a sporadic sort. It arises, I think, from factors that are likely to be continuing factors, and therefore that you would come back if you do visualize such invasion

of another mill's markets in anything like a regular sort of way, then you are back to the—substantially to the method which we have under consideration here.

Q. You mean in a regular sort of way, systematic sort of way?

A. I mean that they commonly do that. If they do commonly invade other mills' territories, as it seems to me they would be inclined to do rather than invading them just sporadically then you are back to the method that we have described here.

Q. You mean by a regular sort of way a reciprocal sort of way?

A. I answered that they commonly—they would commonly—mills commonly followed the practice of invading other mills' territories on a freight-absorbing basis.

Q. You mean share each other's advantageous market?

A. These are your words.

43812 Q. I am asking you.

A. I would not accept that terminology, because "sharing" implies that it is something that you quite willingly do. Now, as I see it, no mill likes to have some other mill sell in its territory. I have explained at some length, I think, in various places that it would seem to me that the mill would have no way of preventing it. It would not welcome such an invasion of its market as is implied by the word "sharing."

Q. Wouldn't you say, Doctor, that if the uniform mill base method were followed without any exceptions, and it would tend to keep the distant mills out of the home market of other mills, that the addition of these exceptions to which I called your attention would also operate in the same way unless they became so systematically adjusted as to produce the same results you now have under the present system?

Mr. Bond: I object. I do not know what Mr. Wooden means by "these exceptions."

Trial Examiner Norwood: I think the witness does.

Mr. Bond: One minute he is quoting from a statute; the next minute he is quoting from—

Trial Examiner Norwood: Objection overruled. The witness can answer that question.

The Witness: The question?

(Question read.)

Trial Examiner Norwood: Is that right, or not?

43813 A. If you mean by "addition of these exceptions" primarily the occasional freight-absorbing sale made into another mill's territory—home territory—

By Mr. Wooden:

Q. No, I do not mean that.

A. Then, I do not know what you do mean.

Q. The exceptions to which I directed your attention inhering in differences in the cost of manufacture, sale, or delivery, resulting from the differing methods or quantities in which cement is sold.

A. Well, it seems to me that those are significant for the subject, that I understand you are getting at, only if they lead to freight-absorbing sales, and so I am saying—I am asking if you are referring to freight-absorbing sales that might arise out of those factors or others.

Q. Freight-absorbing sales is just one element in the picture. There are also fictitious freight sales involved. Well, I will pass on.

Now, directing your attention to page 43144 of your direct testimony, you testified there on lines 19 to 22 that as long as there is any other mill within any reasonable distance, so that it is possible to send cement into the territory, the isolated mill could not be properly called a monopolist.

A. Yes, sir.

43814 (Mr. Bond hands record to the witness.)

Q. Then, I take it very clearly under that assumption the mills in the Lehigh Valley, 18 or 20 of them close together, and with the same freight rate to distant points, you could not call that group of mills a monopoly if they were selling on an f.o.b. mill basis, could you?

A. No, I would not, although that was not the type of situation to which I was referring. You see, I was speaking of an isolated mill that had some mills within striking distance, so to speak.

Q. But it is not a monopoly even in the isolated mill so long as other mills can ship into its territory?

A. No, we do not have a monopoly as long as any mill's freedom of action is limited by the possible reactions of some others of its own group.

Q. Especially if the only way they can come in is by a lowering price?

A. No, I would not say that. It is not a monopoly if they could come in to share the market and would be en-

couraged to come in and share the market, by the raising of price or by anything else that the mill might want to do. Anything that places a limit—

Q. If you were to assume that members of the industry had circulated a great deal of public statement to the effect that the mill base method would create local
43815 monopoly, you would not agree with it, would you?

A. Well, in the terminology that laymen use, I can see that picture presents some aspects of local monopoly, but an economist would not call that a monopoly in the true sense of the word; no, sir.

Q. Doctor, you say here on the page to which I directed your attention the isolated mills could not properly be called a monopolist. Why, then, did you testify on page 43345 and 346 that you thought the uniform f.o.b. plan was the best example you could think of of collusive control?

A. Did I say that, sir? Will you point the lines, please?

Q. Do you have the page there, 43345?

A. 43345?

Q. Yes, and 6. It begins near the bottom of the page and goes over the next page.

(Mr. Bond shows record to the witness.)

Q. Beginning with the last question on page 43345 and running over to include your first answer on page 43346.

The Witness: Now, may I have the question, the exact wording?

Trial Examiner Norwood: Read it.

(Question read.)

Mr. Wooden: Example of an indication of collusive control.

A. What did I mean by it?

43816 By Mr. Wooden:

Q. No. I think what you meant by it can be drawn from the record, unless you want to add something to it; but I understood you to say here a few minutes ago, to reiterate your testimony on page 43144, that the isolated mill could not properly be called a monopolist, and on 43345 and 4 you thought it was the best example of indication of collusive control that you could think of.

A. Yes.

Q. Now, which of those do you want to stand on?

Mr. Bond: If Your Honor please—

Trial Examiner Norwood: You say uniform f.o.b. mill

prices were included in his statement there as a perfect example.

Mr. Bond: He is misquoting his last answer.

Mr. Wooden: It is the uniform f.o.b. mill price of a particular mill.

Trial Examiner Norwood: Yes. Well—

Mr. Bond: But he is misquoting what the Professor said on 43345.

Trial Examiner Norwood: Let the Doctor read his answer and then let him answer the question.

Mr. Bond: Your Honor will note an objection to the question as being an improper summary of the witness' testimony.

43817 Trial Examiner Norwood: Objection overruled.

A. Well, I do not see just what you are getting at, Mr. Wooden, but it does not seem to me there is an inconsistency in those two propositions.

I have said, with respect to the uniform f. o. b. mill method, that I did not think it could properly be said that under that method you did have—that each isolated mill would be a monopolist.

I said in the other statement that the adoption of the uniform f. o. b. mill plan, would, in my opinion, be a natural thing for a group of people who were in collusion to undertake.

Now, I do not see any inconsistency in those two.

By Mr. Wooden:

Q. In other words, you draw a distinction between monopoly and collusive control.

A. No—well, I do, of course, but that is not the main point here.

In the one case I was saying that if you had an isolated mill here that it was not monopoly; in the other case I am saying that if you had a group of people who were able to act together as effectively—effectively enough, that it would be quite natural for them to agree not to sell in one another's territory. I do not see the inconsistency.

Q. Do you agree that collusive control is one
43818 form of monopoly, economically speaking?

A. Well, no, it is not one form of monopoly. Monopoly is complete control by one person or a group of people acting as one. Collusion would be, I suppose—

well, it would be a matter of degree. Certainly it would be less pronounced than monopoly.

Q. Well, don't economists recognize that collusive control has the same effect, similar effect, to monopolistic control?

A. Not in degree; no, sir.

Q. Not in what?

A. Not in degree.

Q. But in kind?

A. That is difficult to answer.

Collusive control, I think—collusive action will imply to an economist, I think, a great many things, such as acting in common for some purpose. That purpose would not necessarily be to gain monopolistic control.

Q. Don't you economists recognize that monopoly and collusive control are of the same species in that they both depart from the economist's conception of competition as the force that should determine the marketing conditions?

A. Well, now, we have "should" involved in it, but I think I would be getting to the main point of your question if I say that economists recognize that collusion differs from monopoly principally in degree.

Q. And not in kind?

43819 A. Well, sometimes it does in kind; but principally in degree.

Q. Doctor, you testified on page 43240, lines 6 and 7, that you thought the degree of competitive pressure was not greater in the one system than in the other.

A. Yes, sir.

Mr. Porter: What system?

Mr. Wooden: Well, between the present method of marketing employed in the cement industry and the uniform mill base method.

The Witness: Yes, sir.

By Mr. Wooden:

Q. Were you then speaking of it in the concept of competitive pressure or the lack of competitive pressure, as distinguished from the technical concept of monopoly in meaning one ownership control?

Mr. Bond: Does Your Honor understand that question?

Trial Examiner Norwood: Read it.

A. I think I was quite obviously comparing the competitive pressure under one method with the competitive pressure under another, and the context does not indicate that I was comparing it with some third thing.

By Mr. Wooden:

Q. Well, if the degree of competitive pressure is not greater in the one than in the other, then you would
43820 not say that the degree of competitive pressure is greater in the present method than it would be in the uniform mill base method?

Mr. Bond: I object.

Trial Examiner Norwood: Objection overruled.

Mr. Wooden: I grant you it is argumentative, but I am giving him the opportunity of reconciling the testimony that he gave.

Mr. Bond: If "A" is greater than "B," is "A" greater than "B."

Trial Examiner Norwood: Let him answer.

A. Well, of course, I referred to competitive pressure at a number of different places and referring to slightly different things at the different places.

Right here I was referring to the competitive pressure placed upon the manufacturer in fixing his price—determining his price under this system, and in that particular respect I was saying that I could not see that one clearly gave any greater competitive pressure of that sort than another.

By Mr. Wooden:

Q. Than the other.

A. Than the other. There were some other respects in which I felt that the competitive pressure was greater under the present method than under the uniform f. o. b. plan.

Q. Now, on page 43146 you said that there would be a resemblance to monopolistic control over price
43821 by the isolated mill under the uniform f. o. b. mill method in that within certain limits he could fix price at will. But wouldn't his ability to do that within certain limits depend upon whether he kept his price lower than the outside mills who might invade his territory if he increased it?

A. Well, that sort of thing is the limiting factor. But

I point out that sometimes that limiting factor would not be very effective. I was not stressing that point there. I was rather indicating the reasons why I thought the f. o. b. mill plan would not result in monopoly. But if you want to look at some of those cases, I would say that in a situation in which the outer fringes of the market area being controlled by a certain mill were not particularly good markets, then there might be a considerable area within which the mill in question could raise the price—I do not mean area used geographically; I mean there would be quite a range in which it could raise its price before it ran into the serious objection of having its market contracted. But, as I said, there are numerous sort of examples, and it is hard to generalize concerning the—

Q. Why do you assume that line of in between where their delivered costs were on an equality? Why do you assume that that would not be an important factor?

A. I was not assuming that. I said there would be some cases in which that limitation upon the mill's
43822 power to fix its price would not be very strong, and there would be other cases in which it could be quite strong, of course.

Q. And even in the territory where it is dominant, so to speak, doesn't its dominance depend on its ability and willingness to make a lower price there than the outside mills are willing to make?

A. Well, it does depend upon that, it is true. But in the market under the method that you are speaking of, that is, the uniform f. o. b. plan, the advantage of being near its market is so very great that it would give—that that particular thing would give the mill considerable freedom of action to raise its price.

I would regard the limiting force as being the fact that as it raised its price it would limit geographically its market area. Whether that is important or not depends upon whether there are any important markets lying in that area that it would lose by raising the price.

Q. And its limitation would exist also right at its home town, would it not, if it raised the price higher than other mills were willing to take when they shipped in there?

A. But that would be an extremely high price. If in its home town,—if it only has to consider the competition

of a distant mill which is selling on a uniform f. o. b. mill plan and adding freight, then it is clear that this mill in question could raise its price—as far as that par-
43823 ticular consideration is concerned, could raise its price to a point equal to the mill price of the distant mill plus the freight from that point to this local town.

Q. Now, on page 43146, lines 13 to 17, you say that if two mills were located closely together, and could
43824 not sell outside the area on a freight-absorbing basis, the competition between them would become extremely keen. More keen than it is now, I take it.

A. No, not more keen than it is now. I was referring simply to the fact that—

Q. You did not mean it would become any more keen than it is now?

A. Just let me consult my answer.

(Pause.)

Well, I can see some respects in which—in the first instance that might be true, because if the mill—if those two mills do not have the alternative of selling part of their product in a distant mill, that means—

Q. In a distant market.

A. —in a distant market, that means that their desire for volume will impinge upon this particular market, but I emphasize "in the first instance" because it is perfectly clear when you have two producers located, say, in the same town producing a homogeneous product of this sort, and their business is characterized by high overhead costs, it is perfectly clear that the competition, the price competition that one might expect in the first instance, is not likely to run its full course; or if it does run its full course it means the ruin of one of those mills, and then you have one mill instead of two, and you are back to the alternative situation.

43825 Q. Do you agree that temporarily, at any rate, the competition between them would become more keen?

A. No, I do not think so, because business men anticipate those results. Each man knows that the other man has high overhead costs; that he has pressure upon him for volume, and they would act upon their anticipations.

Q. Well, when you said before that competition between those two mills would presumably become extremely keen in order to gain volume in a certain limited area,

you did not mean to say that it would become more keen than it is now?

A. That is very difficult to answer, sir.

I think, as I have explained, that the danger of that type of competition, commonly called cut-throat competition, would be so clearly in the minds of the two mill owners, under this plan or any other plan, that it would not run its full course.

Mr. Wooden: Your Honor, I submit I am entitled to an exact answer to my question.

Trial Examiner Norwood: You mean it becomes more keen with respect to what? More than what competition?

The Witness: I understand—

Trial Examiner Norwood: More than would exist?

The Witness: I understand Mr. Wooden asked me whether that competition between two mills located at the same producing point would be keener under the 43826 uniform f. o. b. plan than under the present plan.

By Mr. Wooden:

Q. I am asking what your testimony meant, word for word.

A. I have explained my answer, and I think came to a definite answer at the end, that I did not think, taking all those things into account, that it would be.

Q. Not even temporarily?

A. No, because—

Q. Then, how do you envision this result of ruination unless it became more keen temporarily?

A. It seems to me there is nothing inconsistent in that, sir. The ruin of one mill and the very serious injury to the other is the anticipated result that, being anticipated, prevents them from getting into that kind of competition. So I would expect that their natural self-restraint would come into play, because they anticipated the result of what would happen if it did not come into play.

Q. Then, you mean to say, as I understand it, by this language in lines 15 to 17 on page 43146,—you mean to say you did not intend that that should be construed that the competition would become more keen than at present?

Mr. Bond: If Your Honor please—well, I won't object. That is not what he said.

Trial Examiner Norwood: He may answer.
Did you say that or did you not?
43827 The Witness: Well, let me read the answer.
(Pause.)

A. It seems to me, sir, that I said in the earlier answer virtually what I have said here. I call attention to the third paragraph at the bottom of the page that "probably the secondary result of that would be agreement between the mills or final merger of the two mills, in which case we would be back to the same situation that we had with the isolated mill."

By Mr. Wooden:

Q. Yes, but doesn't that final result in your testimony depend upon the assumption of such keen competition temporarily as to lead to ruination?

A. No, sir. I have explained that, also. It is not necessary that you should go through all of the steps that I have described and finally come out to that result. Business men having reasonable intelligence can see that that disastrous result is going to follow from certain actions, and therefore they do not take those actions.

Q. Then, your presumption in line 16 that it would become extremely keen under those circumstances has no foundation, that it would become keener than before?

Mr. Bond: I object.

Trial Examiner Norwood: Objection overruled.

A. Yes, I think I would say that, that it would not in fact be keener than it was under the other plan.
43828 There is this difference—possible difference in degree: I am sorry I can't give you a precise answer on that. There is the possibility that under the present plan the mills in question would find some relief from this pressure by selling goods in distant markets, but it is also true that under this method distant mills may be selling in their markets, one offsetting the other. It seems to me you have about an offset, sir.

By Mr. Wooden:

Q. Now, on page 43147, lines 9 to 14, you say that if the mill selling on a uniform f.o.b. method found it necessary, being a considerable distance from the markets, to reach out, that that would obviously have a depressing effect upon price.

So, then, you agree there, Doctor, do you not, that the f.o.b. mill method would reduce prices?

A. No, sir.

Q. Tend to?

A. It is a very unfair interpretation, I think, to place on this answer.

I have given two paragraphs which were in contrast. In the first one I said that in the case of a mill located in the midst of or very close to a rich market I thought the mill could then raise its price under this alternative plan more than they could under the present plan. On the other hand, we have the opposite situation: If the mill finds it necessary to reach out over this considerable dis-
43829 tance to sell its goods, that would obviously have a depressing effect upon price. The two would have to be taken together.

Q. I did not ask you to compare the merits of the two systems in that respect, but in that particular paragraph there, assuming the markets are at a considerable distance and the mill finds it necessary to reach out, that that would have a depressing effect upon price.

A. Yes, I think under that particular set of circumstances it would have that effect upon price.

Q. Now, in lines 6 to 8 on that same page you say that the mill located close to a rich market could raise its price under this alternative plan more than they could under the present plan.

A. Yes.

Q. How do you reconcile that with your testimony on page 43240, lines 6 and 7, that the degree of competitive pressure is no greater in the one than in the other?

A. In that latter case I was obviously speaking of the system as a whole—the method as a whole, covering the whole country. In the other case it seems to me it is quite clear from the context that I was pointing first to one situation in which the competitive pressure would be greater under one method, and in the other situation in which it would be greater in the other method; and, taking all of it into account, I saw no general superiority of one over the other on that particular point.

43830 Q. Do you think a mill located in the midst of or very close to a very rich market can raise its price more where the price must be too low to permit outside mills coming into that one market than where the price is high enough to permit them to come into that market?

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Bond: Now you are talking about uniform f.o.b. mill.

Mr. Wooden: Yes.

A. Well, that seems to me that that places two things in opposition, but I think I see—I think you are asking whether if a mill is located in the midst of a rich market, then is it not a fact that it has to keep its price low enough to keep competitors out of that market? Is that not a restraining force? Is that—

By Mr. Wooden:

Q. No. The question will have to speak for itself.

Trial Examiner Norwood: Read it again.

The Witness: Read it again. I did not understand it the first time.

(Question again read.)

A. Yes, I do think that the pressure is greater in the case—I believe it was the second case that you mentioned. I believe that the pressure under those circumstances 43831 would be greater when the distant mill can invade this market without the necessity of that distant mill lowering its own mill net. I believe that the pressure upon the home mill would be greater under those circumstances than it would be if the distant mill in trying to invade this market had lowered its own mill net—its own maximum mill net, which would be the same under the uniform f.o.b. plan, of course.

Mr. Bond: Does that answer the question?

Mr. Wooden: I think it does, if he wants to stand on it. It is not responsive.

Mr. Bond: I was pointing out he is assuming two different kinds of selling. You told me it was all on the assumption of uniform f.o.b. mill.

Trial Examiner Norwood: Proceed.

The Witness: If that answer is not responsive, I shall be glad to make another attempt.

Mr. Wooden: I thought it was responsive all right.

Trial Examiner Norwood: Go ahead.

By Mr. Wooden:

Q. Now, referring to your testimony on page 43152, where you discuss the probable effect of a uniform f.o.b. mill method in the building of a number of small mills,

and the tendency of railroads to adjust freight rates, well, wouldn't the increased number of small mills create more competition?

A. Not necessarily. It would presumably ac-
43832 centuate the problem of overcapacity, which, as I understand, is present in the industry.

Q. Isn't that a competitive force?

A. Yes, it would be a competitive force. I have not denied that that the competitive force would be working under either of these plans.

Q. But under the increased number of small mills there would be an increased number of competitive units, and presumably an increased pressure on this over capacity, wouldn't there?

A. You mean pressure—

Q. Pressure from the overcapacity.

A. Well, I suppose the greater the overcapacity the greater whatever pressure you see from overcapacity would be, naturally.

43833 Q. But any reduction in railroad rates would reduce the delivered price to that extent, wouldn't it?

A. Not from what it is now. The point of their reducing the railroad rates would be to enable the mills to continue to sell in the same market in the same way that it is now selling.

Q. By a lower railroad rate?

A. You can have a lower railroad rate and a higher return to the mill. As far as the consumer is concerned, it seems to me it is a matter of indifference to him whether what he is paying is in the form of railroad rates or in the form of return to the mill.

Q. You think that is true, economically speaking, that it would make no difference—

A. Yes, sir.

Q. —to the consumer whether he pays to the railroad—

43834 A. The consumer is interested in what he finally pays for the product at the place where he is going to use it.

43836 Q. Doctor, when we adjourned for lunch I was directing your attention to your testimony on page 43153, lines 13 to 16. What I should like to know now is whether when you answered the hypothetical questions of

Mr. Bond you were assuming that cement prices were related to costs or were based upon costs, or were based upon the competitive relationships of the cement producers.

A. Well, I think that one cannot say, concerning the working of normal competitive forces, that it is exclusively one or the other.

Q. I am talking about the assumptions you had in mind when you answered the hypothetical question.

A. Well, I would surely have that in mind, that prices of a product of this kind would not be determined exclusively by cost. If it were so then it would presumably follow that prices would be regularly cost plus a
43837 normal margin of profit, which we know is not the case.

Q. You did not understand that to be the case in answering the hypothetical question?

A. No, sir. I would assume in answering the question that cost would, over a long period of time, have a bearing upon price, but one cannot say that price is determined by the cost of production.

Q. Now, directing your attention to page 43155, concerning the effect upon a mill which was trying to sell on a uniform f.o.b. mill price in competition with mills which continued to absorb freight, and invade its territory, doesn't that simply mean that the first mill could not continue to stand up in competition against mills which were invading its territory at lower mill nets than they were willing to take elsewhere?

A. To what precise answer were you directing your question just now?

Q. It applies to the entire page.

A. And the question is precisely what?

Mr. Wooden: Read it, please.

Trial Examiner Norwood: Read the question.

(Question read.)

A. Well, one does not need to go to that extreme to say that they could not stand up in competition—

Trial Examiner Norwood: A little louder, Doctor.

A. One does not need to go to that extreme to
43838 say that the mill that was proposing to change its policy could not stand up in competition with the other mill. The question was whether it would be—I think the general sense of the question was whether it

would be profitable for a mill to make such a change in policy, and—

By Mr. Wooden:

Q. And what would you expect if it did?

A. Yes, and that said that I expect if it did that it would certainly lose the business which it had previously been getting on a freight-absorbing basis, and that it would certainly have—it would have no assurance that the other mills who had been invading its territory would cease doing so.

Q. And, therefore, I take it that you mean that no single mill is likely to adopt a uniform f.o.b. mill method for itself without—while other mills are using a different method; is that right?

A. Well, I would not say that no case would arise, but normally I would not expect that one mill could do that, or would do that of its own decision under those circumstances.

43840 Q. You think there is a common interest on the face of a situation where distant mills are kept out of a given territory by reason of the fact that the price in that territory is higher than they want to accept,—is lower than they want to accept?

Mr. Porter: Does that last correct your statement?

Mr. Wooden: Yes; "lower" instead of "higher."

A. Yes, because you have two different measures of cost to consider. The mill selling in its own home territory is likely to be thinking of average costs. The mill invading is doing so on the basis, presumably, and normally, maybe doing so on the basis of its out-of-pocket costs, and it is difficult to conceive that the price set by—well, it is unlikely, I won't put it quite so strongly—it is unlikely, that the price set by the one mill for its own home territory can be so low as to make it unattractive to a distant mill that is selling on a freight-absorbing basis, and largely on the basis of its out-of-pocket costs.

43841 By Mr. Wooden:

Q. As a matter of fact, don't you see there a purpose on the part of the home mill that results in him keeping out invaders, or a lack of common purpose, assuming that they are not actually in agreement?

A. We are now speaking about the freight-absorbing method, are we?

Q. No. I am talking about the mill base method as you were in your direct testimony.

A. You mean uniform f.o.b. mill base method?

Q. Yes.

43842 A. Now, under that method, your question is whether there is any common or would be naturally any common purpose between the home mill and the distant mill?

Q. Yes.

A. Why, I could see—

Q. As to the price or as to the territory in which the home mill's price controls.

A. Yes. I could see one, obvious one, that they would both be interested in having those prices remain as high as possible; that is clear. If the dividing line falls, say, half way between these two mills, that dividing line being set by the present mill price plus freight, then that same dividing line might continue to exist if the prices were 50 percent higher, and I could see plenty of common interest there, that they might get together and agree on that base price.

43845 Q. When you spoke of collusive division of markets in that connection, or whether, when you referred to collusive division of markets, did you there mean that it was monopolistic to that extent?

A. That what was monopolistic, sir?

Q. The division of markets.

A. Yes, I was comparing this with a situation in which you might have division of markets arrived at by collusion, and I was saying that there were some points in which this division of markets that would come about under the uniform f. o. b. plan would be similar to that, and some other points that would be different from that; I was not implying the division of markets

43846 under the uniform f. o. b. plan would presumably result in collusion.

Q. You now make no distinction between collusive control and monopolistic control?

A. Yes, I still make a distinction between collusive control and monopolistic control.

Q. Just as you did this morning?

A. As I did this morning, yes, there is a difference in degree. That degree might be great enough to explain the possibility of division of markets without being so great as to characterize it as complete monopoly, I should think.

Q. In other words, there is such a thing as division of markets that is the expression of normal competitive conditions, isn't there?

A. That is just the point in my answer. I was indicating that this so-called division of markets here has some resemblance to a collusive division of markets, but that there were some other points in which it did not resemble that.

Q. In other words, while it might superficially resemble it, it is possible for it to be just the opposite?

A. No, it would not be just the opposite because there is still that point of resemblance I spoke of; namely, that in each one of these markets there is one seller.

Q. Isn't there such a thing as a natural division of markets resulting from competitive conditions?

43847 A. Oh, yes. I said as much in the answer.

Q. Now, passing to your testimony on page 43159, with regard to an assumption that mills are selling at a uniform f. o. b. mill price, and there is a big demand for a particular mill's—in a particular mill's territory due to a large Government project, and then assuming that the mill is able to supply only a portion of the cement for the project, and the balance of it is needed for its commercial customers.

A. Yes, sir.

Q. Then, you were asked what would be the effect on the total cost of the project to the Government, and part of your answer appears on page 43159. Now, in lines 6 and 7 you assume that the more distant mill would know that the nearby mill could not supply all the needs of the Government.

A. On what page was that?

Q. 43159.

A. Yes, sir.

Q. Did you also assume that they would know just how much of the Government's needs a particular mill would be able to supply?

A. Oh, no. It is not necessary to know that, I think.

Q. The fact that the nearby mill could supply 50 percent of the Government's requirements would not be any more important than if it could supply only 10 percent of the Government's requirements?

43848 A. Well, as for the result of bringing about different prices under those circumstances, I do not think it would be necessary to know the precise figure.

Q. You went on in that same connection, did you not, to conclude that the final result of paying two different prices for different parts of the cement would result on the average in a higher price, didn't you?

A. A higher price than the price charged by the nearby mill and the present lower price?

Q. Wouldn't that depend, Doctor, upon how much the difference in price was, and how much the quantity was that the mill could supply?

A. To that result, yes, as to how that average cost to the Government would figure out would depend, of course, upon proportions.

Q. In other words, didn't you reach a conclusion there without taking sufficiently into account those factors?

A. No, sir; I think not. The fact that you would have two different prices for that, it would not be necessary, I think, to determine the precise percentages.

Q. How do you know the average price would be higher instead of lower unless you knew these other prices, the mere fact there were two prices on a proportion of the product, how would that make the price higher instead of lower?

A. Well, if you start with one plan, and one
43849 method in which the price is customarily based, let us say upon the commercial price of the nearby mill, and then you contrast with that another method in which the price is—part of it is based upon that and part of it is based upon something else that is higher, then it seems to me obvious that the result, the average result is going to be higher. Now, by what amount would depend upon the proportions, of course.

Q. Well, under the present method, can you tell whether the price, the average price, paid by the Government is higher or lower than it would be if only the same delivered price were paid by the Government as on commercial business?

Mr. Bond: Will you read that?

The Witness: I do not follow it.

Trial Examiner Norwood: Read it.

(Question read.)

Mr. Wooden: Cut out the word "only."

Trial Examiner Norwood: The same delivered price?

A. Well, you are assuming that they are different, that the price paid by the Government is different—

By Mr. Wooden:

Q. Yes.

A. —than the commercial price?

Q. Yes.

A. Well, if it is different than the commercial price, then it seems to me it is different than the commercial price.

13850 Q. Yes. I want to know whether you think it is higher or lower than the commercial price, just because it is different.

Mr. Bond: Then I object. The witness knows nothing about actual prices.

Mr. Wooden: Well, would be—

Mr. Bond: Would be under what condition.

Trial Examiner Norwood: Can you answer that question?

The Witness: No, sir.

By Mr. Wooden:

Q. As a matter of fact, Doctor, can anybody answer that question without taking into account the amount sold at the different prices, and what the different prices are?

Mr. Bond: That question assumes on price.

Trial Examiner Norwood: The objection is overruled. Answer the question.

A. Well, it seems to me you are asking a factual question, can I determine factually which of these two is actually the higher? Of course, I could not.

Trial Examiner Norwood: Read the question.

By Mr. Wooden:

Q. You testified on direct to what you would expect. Now I am asking you what you would expect under these conditions that I cite to you.

Mr. Bond: Read the question again.

(Question read.)

43851 Mr. Porter: Your Honor, I object on the ground that no witness can say whether anybody can answer the question. I do not think that is a proper question.

Trial Examiner Norwood: Well, he can tell what factors he needs to answer the question.

Mr. Porter: But he cannot tell what anybody needs. He knows what he needs.

Trial Examiner Norwood: The objection is overruled.

A. I am sorry, sir. It may be that my own mind is at fault, but I did not get the point of that question.

Trial Examiner Norwood: Are other factors than the ones he mentions necessary in order to determine whether the Government is paying more or less for its cement than it does when it pays different prices in the circumstances included in that previous question?

Can you answer that?

The Witness: I do not think I can; no, sir. I have gone as far as I can on that point, in saying that by comparison with a method in which mills would quote prices for delivery at a certain point, based upon the mill price of the nearest mill, plus freight by comparison with that method, then another method in which the—that same procedure is not followed, and where you have this particular situation that I have described, or was described to me, of a mill being,—the nearby mill being able
43852 to supply only part of the cement, under those circumstances I would think that you would get higher prices under that latter plan,—higher average price.

By Mr. Wooden:

Q. Now, you have assumed that you would get higher prices under those conditions. If you were using a uniform mill base system why can't you answer the question when I asked you if the price would be higher or lower under the present system?

Mr. Bond: You haven't asked that question.

Mr. Wooden: I have been trying to.

Mr. Bond: I have not heard it.

Trial Examiner Norwood: Answer the question.

A. Higher or lower under the present system than it would be—

By Mr. Wooden:

Q. No. Than the average price,—whether the average price would be lower or higher than the price otherwise.

A. I think it would be lower if you followed that; if that method that I have just described is followed, then the price would be lower.

Q. So you assume that the price under the present system would be lower without knowing what the price is, or the two prices are, and without knowing how much is sold at the different prices, but you assume that it would be higher under the uniform mill base system, without knowing what the difference in price was, and what
43853 the difference in quantity sold at the different price was?

A. Under those particular circumstances we were discussing, I would say yes. I could not say how much higher, of course, without knowing the percentages.

Q. In other words, you reach opposite conclusions from the same set of circumstances so far as the difference in price and the difference in quantity is concerned?

Mr. Bond: I object. It is merely an argumentative question with the witness.

Trial Examiner Norwood: The objection is overruled. Let him answer that.

A. Yes, if one method is to use the price of the lowest mill plus its freight to the point of delivery, other mills meet that price, then that, I would say, would yield lower results.

By Mr. Wooden:

Q. Lower average?

A. Lower average than when under the circumstances described to us here, the one mill selling on a uniform f. o. b. plan could supply only part of the cement, and the other mill at a distance also selling on that same plan could supply the remaining part of the cement.

Q. And you also assumed in your answer on direct on this subject, do you not, that under the uniform mill base plan the price would be lower than it is under the other plan,—do you not,—by hypotheses? Do you assume that it is lower?

43854 A. No, sir.

Q. Then, how would it keep the other mills out?

A. Keep the other mills out from where, sir?

Q. From competing on that basis in its home territory?

A. Well, the other mills are required to sell on a uniform f.o.b. mill plan, as I understand it. They could conceivably, if they wanted to do so, lower their base or their mill price enough so that when freight had been added they would be below the nearby mill that—and that is unlikely to happen, I should think; unless the order in question were extremely attractive, it would be quite unlikely to happen if the distant mills knew that the nearby mill could supply only part of the total demand.

Q. It would not make any difference whether it was 10 percent or 75 percent of the Government demand it could supply?

A. It makes a difference for some purposes, yes. I have explained that before.

Q. Doctor, wouldn't you have to know what the average cost to the Government was under one assumed state of facts and what it was under another assumed state of facts, to know whether the average cost was lower or not?

A. Well, of course, your figures might change from one situation over to another, but the force of these factors, the force of these factors, I think, would be to work in the direction that I have described.

43855 Q. Isn't that another case of deductive reasoning and ignoring some of the important inductive facts?

Mr. Bond: I object.

Trial Examiner Norwood: Overruled.

A. It is a case of deductive reasoning, quite obviously.

By Mr. Wooden:

Q. You do not think these other inductive facts are important in considering that?

A. The original question put to me and the questions that you have been putting to me have been based upon certain assumptions and reasoning from assumptions is deductive reasoning.

Q. Well, passing now to your testimony on page 43161, wouldn't you agree that the words "producing",—the word "producing" in lines 23 and 24 should be "consuming"?

(The witness is reading the transcript.)

A. Yes, I think that is correct.

Mr. Bondy. May that correction be made?

Mr. Wooden: Yes.

By Mr. Wooden:

Q. Wouldn't that shifting of productive capacities that you referred to there in those lines, 19 to 25, favorably affect mills who were already—which were already well located with respect to markets?

A. Yes, that is true, it would.

Q. And adversely affect those that were not al-
43856 ready located favorably in respect of markets?

A. You mean this shifting would adversely affect them?

Q. Yes.

A. Well, I think that—I would not agree precisely to that, but that the forces that we are talking about here,—that is this new proposed alternative method,—would tend to do the things which you have suggested.

Q. That shifting would tend to increase costs of mills unfavorably located with regard to markets, and to decrease the cost of those favorably located regarding markets, wouldn't it?

A. Well, it would improve their relative market positions, I think.

Q. Wouldn't that tend to decrease their costs?

A. You mean their costs of production, sir?

Q. Yes, even indirectly cost of production.

A. I suppose it might have some effects upon costs of production.

Q. Wouldn't you expect—

A. Through affecting volume, if that is what you mean.

Q. Yes. Wouldn't you expect the ultimate result of such a shifting be to reduce the total capacity of the industry?

A. No, sir; I see no reason why the total capacity should be less under one method than under another, even if either of these methods had been in existence for a long, long time, and during the time when you are shifting from one to the other, that you have an addition
43857 of mills for some of the reasons that I think we agreed upon, and that would not be offset by the other mills going out of existence, and so during that time of shifting which in a fixed capital industry is a very long time, you would have the effect of increasing capacity.

Q. But the ultimate result would be the other way?

A. No, sir; I do not think so.

Q. You think it would permanently increase the capacity?

A. Oh, no, it would not permanently increase the capacity. I am saying—but that the capacity would presumably be as great once you had settled down to the new method of marketing as it is under the present method of marketing. I see no reason why in the long run you would not get the same capacity that you would—under the one as you would under the other.

Q. Would you say that the increased cost disparity would have any tendency to increase competition?

Mr. Bond: Increased cost disparity?

By Mr. Wooden:

Q. Disparity between the mills under this shifting?

A. Well, first, let me make it clear that I do not think there would be any greater cost disparity in the long run under the one method than another, but during the period of transition, there probably would be an increase in the cost difference between some mills and other mills. Now, your question is whether that would have the effect of increasing competition.

43858 Q. Yes.

A. Well, except in so far as competition, and this is an important exception I think, except in so far as competition is restrained by the natural self-restraint of business men. You already have, I understand, overcapacity in the industry, so in so far as overcapacity can create competition you have that factor. Now, you are simply proposing to increase the overcapacity, whether as you go on and on, making a bad situation worse, you get increasing competition, I would not be prepared to say.

Q. But the increase in overcapacity would be among the mills that were best located economically with reference to markets, wouldn't it?

A. Oh, and with the others, too, I should think.

Q. I know, the new capacity would be among the mills that had the better location, wouldn't it?

A. It would be located better, yes, but it would have its effect upon competition with all of the mills.

Q. Now, referring to your testimony on page 43163, where you say it would be a sheer coincidence if the best located mill, from the point of view of the market, were

also the best location from the point of view of raw materials, labor supply, and other factors of production.

A. Yes, sir.

Q. Would you say it was sheer coincidence if you
43859 were to assume that the mills in the Lehigh Valley located themselves there because of the happy combination of raw materials, labor supply, and nearness to markets?

A. Well, when you say that you find a happy combination of these things, it presumably means that you have found a reasonably good combination. It does not necessarily mean a perfect combination. My only point was that in an effort to gain better location on one count, that chances are that you are going to lose something on the other counts.

Q. As a matter of fact, Doctor, is there any satisfactory economist test of whether a mill is well located or not, if you discard the test of competitive effort with other mills at other locations?

A. Well, I suppose there is no one test that can be made regardless, except profitableness, of course, and no one conclusion to which one could come that would hold under all different methods of marketing. If the method of marketing changes then the location which might have been the best under the old method might not be the best under the new method.

Q. Well, isn't the test of competition the chief reliance on which an economist must base his conclusion as to whether a mill is well located compared to other mills?

A. Well, I suppose that is true; that is competition as showing itself in profitableness of the mills. But my point
43860 is that you can have competition under various different marketing methods, and as you change those marketing methods then the relative desirability of certain locations will shift along with it.

Q. Now, referring further to your testimony on page 43163, where you discuss the advantages of a chain mill company with a series of mills at different points, as to whether it would have an advantage or disadvantage over the smaller independent company with a single mill, under, as I understand it, the uniform f.o.b. mill base method, is that correct as to my understanding of what you are there referring to?

A. Now, could I have Mr. Wooden's question, please? (Question read.)

A. Yes.

Q. Well, doesn't the chain mill company have a similar advantage under the present system?

A. It would have certain advantages under the present system, no doubt.

Q. And is it similar?

A. Oh, it does not seem to me that it would have precisely that same advantage, because under this proposed method each mill is going to be selling in the territory relatively close to the mill, and my point in the answer was that since a chain mill would find some of its mills advantageously located and others not so advantageously located, that the one could be balanced—the profitable ones could be balanced against the unprofitable ones, and
43861 it would give,—looking at it from the point of view of the corporation owning the mills,—it would give a corporation owning the chain of mills an advantage over one owning one independent mill, if in fact that independent mill were adversely located, as I said.

Q. But wouldn't you think that under the present system chain mills are in a position to balance the advantages of one of their mills as against the disadvantages of another?

A. Yes, but the independent mills, the smaller mill in this assumed case, is not so strongly affected by an adverse location.

Q. Under the present system?

A. Under the present system, yes.

43865 Q. Now, on page 43164, lines 11 to 21, you testified
43866 that the pattern of prices under the uniform mill base system would be the same as under the present method, and in line 21 you said the pattern would be the same, meaning the geographic relationship of prices.

A. Yes, sir.

Q. Do you say that, Doctor, after taking into account that under the uniform mill base plan there would be no non-basing-point mills,—that there would be no absorption of freight, no phantom freight, and no cross-hauling in the genuine sense, and yet you say the pattern of prices and their geographic relationship would be the same.

A. Yes, sir.

Q. All you mean by that is, don't you, Doctor, that the mill selling on a uniform f.o.b. mill price, would add the freight from its mill to get the delivered price?

A. Oh, that is not all I mean by that, but I mean just—

Q. Well, what else?

A. What I say, that I think the pattern would be the same because the various things to which you have referred are not, as I understand it, the—do not affect the prices. Let me take a fresh start on it.

Under either plan you would have certain mills determining their mill price, added to that is the freight.

Q. Wouldn't all the mills be—

A. Just a minute, please. Added to that is the
43867 freight, and thus you get a pattern of low price at a mill, prices rising as you proceed away from that mill until you come to a point where prices made by another mill meet those prices. Now, that pattern would be just the same, it seems to me, under either of these plans. The difference would be that under it is an obvious difference, of course—that under the present plan these mills do, in fact, reach over into one another's territories, and accept the price made by the other mills, but I do not see that that fact, changes this pattern, and it seems to me it would be the same under two methods.

Q. You think the pattern is the same where they follow the leader and where they do not

A. I do not get the import of that question in this particular connection.

Q. Well, when they reach over into another territory and accept the prices there, they are following some other mill's price leadership, weren't they?

A. I would say that they were accepting the price that they have to accept in a certain territory where some other mill has a decided advantage.

Q. You say the pattern is the same even though under the uniform mill base system each mill would obtain a uniform mill net, while under the present method each mill obtains and accepts varying mill nets?

Mr. Bond: I object.

43868 A. Yes, in fact—

Mr. Bond: Just a moment.

We have had a lot of testimony here that is simply confusing the record, because Mr. Wooden has not taken the assumptions of the original question. He has left out part of it. The original question was whether in those distinctions where under such uniform f.o.b. mill method the mill continued to sell to those destinations, would the prices

conform to a pattern similar, wh[illegible] you now have, to the extent that rail freight was used. That is all the Professor was answering when he said the pattern would be the same in that restricted territory, and these later questions are distorting the question, the answer, and everything else.

Trial Examiner Norwood: I hardly think that, but you have the redirect examination to clarify anything that—

Mr. Bond: It wastes the time of court.

Trial Examiner Norwood: That is not clear at this time.

By Mr. Wooden:

Q. Doctor, referring to your testimony on page 43165, lines 16 to 20, with reference to what you would ex-
43869 pect under a uniform f.o.b. mill method on Government bids, and you said you would expect them to be uniform, or if the mill with advantage of mill location found its f.o.b. price plus freight higher than the price that will be bid by the nearer mill it would not bid at all. Doesn't your statement there imply that the mills would absorb freight in their bids just the same as they now do?

Mr. Bond: May I ask the witness to read two questions and answers so that he can see the whole testimony that he gave?

Mr. Wooden: All right.

A. (After referring to the record) I said in answer to that question if the disadvantageously located mill under those circumstances found that its f.o.b. price plus freight would be higher than the price that would be bid by the nearer mill it would not bid at all.

By Mr. Wooden:

Q. That word "advantageously" should be "disadvantageously"?

A. Disadvantageously.

Q. All right. With that change, will you answer my question?

A. Now, the question is what, sir?

Q. Whether your testimony does not imply that the mills that did bid would absorb freight just as they do now.

A. It is not necessary to assume, I think, that they would absorb freight. They might lower their uni-
43870 form f.o.b. mill price enough to get into that market if they considered that it was desirable to do so.

Q. At the same delivered price as the other?

A. Yes, if they believed that the nearby mill was in a position to meet the demand of the Government. There is that other exceptional case that we were speaking of in which—

Q. You were assuming a state of affairs, then, weren't you, where instead of a uniform mill base method being applied, they would in effect use the basing-point method and treat the mill nearest freightwise as the base mill?

A. No. I was assuming that the more distant mill would conclude that it would have to get its product to the point of delivery at as low a price as was determined by the nearby mill plus its freight, and that if it could not do that it would not have the alternative which it now has of selling in that market on a freight absorption basis. The other way of getting in would be to reduce its mill price for its general business, and if they did not think it was worth while, a conclusion to which they would naturally come, then they would not bid at all.

Q. I am talking about the ones that did decide to bid.

Mr. Bond: That is what he is describing.

Q. Aren't you implying there that they would decide to bid by absorbing freight in order to make their prices delivered the same as those of the nearest mill?

A. No, I would not assume that, because that would be contrary to the assumption of the uniform f.o.b. mill plan.

Q. That is just exactly the point.

A. A more distant mill would, as I think I just said, be faced with the alternative, providing its present base price plus freight would give a higher price than the base price of the nearby mill plus its freight. Providing that, it would have the choice of lowering its mill price so that it could get in there, or the alternative would be presumably not to bid.

Q. Suppose you assume a half dozen mills located at varying distances freightwise from the place of delivery and all of them using an f.o.b. mill—uniform f.o.b. mill method, how would you expect those half dozen to make the same delivered price bid unless they adjusted and equalized their differences in freight?

A. They could adjust or equalize, as you say, their mill prices if the business were sufficiently attractive to make it desirable for them to do so.

Trial Examiner Norwood: That involves absorption of freight, does it not?

The Witness: No, sir. I understand absorption of freight means that you are accepting on some business less than the mill net that you receive on other parts of the business. I am assuming that to be inconsistent with the assumption of the uniform f.o.b. mill, that that would not be permitted, and therefore all they could do would
43872 be to lower the mill net on all of their business to a point which will enable them to get into that market.

By Mr. Wooden:

Q. Assuming there are a half dozen bidders of varying distances freightwise from the destination, and each of them had the same uniform f.o.b. mill price, how could they equalize their delivered costs at that particular destination without equalizing their freight and some of them absorbing freight?

A. They could not do so, I assume, if they continued to have the same base—the same mill price.

Q. Then, if they assumed that the half dozen had not the same uniform f.o.b. mill price but different f.o.b. mill prices that were uniform as to the customers of each, wouldn't there be still greater difficulty in making their delivered price uniform on the particular bid?

A. I do not see that there is any great difficulty in making their delivered price uniform if they are willing to stand the cost of the price reduction that I have just described. They would know then, as well as they do now, that a certain mill nearby has a certain uniform price, and they know what the freight rate is, and they know, therefore, what the price would be at a certain point. They know that if the base price they charge, or the mill price they charge plus freight is greater than that, that there is no point to their bidding. They know that they could get in by lowering the mill price. As far as the knowl-
43873 edge of what is necessary to do is concerned, it seems to me there is no difference in the two situations.

Q. You say that mills located at varying distances freightwise from the destination can make their delivered price at that destination uniform without some of them absorbing some of the freight.

A. Defining freight absorption as I do, I would say that the—that it is quite possible for them to do that without absorbing freight.

By Mr. Wooden:

Q. And this is how you define it in this connection?

A. I define "freight absorption" as accepting a lower price on more distant business than you do on the business on the market which you control, that is, in which you determine the price.

Q. You mean by accepting a lower price a lower mill net?

43874 A. A lower mill net. I thank you for correcting me.

Trial Examiner Norwood: How can they do it?

The Witness: How can they do it now?

Trial Examiner Norwood? Without adjusting the freight, or adjusting the mill net?

The Witness: They do it now merely by meeting the price that is set by the nearby mill.

Trial Examiner Norwood: Doesn't that operate to reduce the mill net?

The Witness: Yes, it does, and that we call freight absorption. I am not sure that it is a very good term, because it is—it means that he has shrunk his mill net. Popularly speaking, we think of it as absorbing the freight, but you could think of it as absorbing something else, as far as that is concerned. The essential thing is he does take a lower mill net on that business, because it is necessary for him to do so.

By Mr. Wooden:

Q. Doctor, do you mean to say that if one mill had a freight cost to give a destination 25 cents a barrel, and another one had a freight cost of 50 cents a barrel, and another one had a freight cost of 60 cents a barrel, that the mill with the freight cost of 60 cents a barrel could make its prices uniform at destination without absorbing the difference in freight?

Mr. Boyd: That is the sixth time the question has 43875 been asked.

Mr. Wooden: It is more specific.

A. You are visualizing three different mills trying to sell into a certain market.

Q. Yes.

A. And they have these different freight costs. And you are asking how is it possible for them to get into that market at the same delivered prices. Does it not require freight absorption to do so.

I say again it does not require freight absorption for them to do so, because they can change their mill nets, if they wish to do so, to a point where the uniform mill net of the mill, when added to freight, is low enough to get them in that market. The essence of freight-absorption is a difference between mill net return—

Q. That is just the point.

A. I mean the sales to one customer and to another. I do not mean the difference in mill net return to one mill as compared to another. Maybe that is where our confusion is.

Q. But it could not in the one case make its price the same as the others at the delivery point unless it were willing to take a lower mill net to the extent that its freight was higher than the nearest mill.

A. That is what I believe I have said several times; yes, sir.

Q. And in doing so they would thereby depart 43876 from the uniform mill base method, wouldn't they?

A. No. The uniform mill base method, as I understand it, simply means that a mill must sell on the same mill base to all its customers. It does not mean that all mills must sell at the same mill base.

Q. Of course we are agreed on that. But assume that this one particular case that I put up to you—

A. Yes, sir.

Q. —is going on at the same time other cases are going on, and there are different mill nets and different degrees of freight costs, and different degrees of freight absorption.

A. Well, now, if you introduce a number of other mills located differently and consider other markets, a whole maze of them, then it is clear, I think, that they could not get into all of these markets at the price being set in that market, and thus there would be a number of those markets in which they would not bid, and in which they could not sell. In other words, it seems to me that is what has been clear all along, that under the present plan there is greater possibility of a large number of mills getting into a certain market to sell than under the other plan. That is all that comes to.

Q. And the possibility of a large number of mills coming into sell at the same delivered price?

A. Well, they are going to sell at the same delivered price if they sell at all.

43877 Q. But this will permit a larger number to sell at the same delivered price?

A. The present plan permits a larger number, yes.

Q. Doctor, do you see any objection as an economist to a method of selling which would require sellers to sell to such producers as called to buy on a delivered price on that basis while selling to customers who wished it on an f.o.b. mill basis?

A. Do I see any objection?

Q. Yes.

A. You mean would I like it or would not like it?

Trial Examiner Norwood: Would it be practicable for them to do that?

The Witness: In answer to Your Honor's question, I do not think it would be.

By Mr. Wooden:

Q. Will you explain why not?

A. Well, some buyers come to a market and want to buy on one basis; some are buying on a different basis. You would get different costs to competing buyers in the same town.

Q. You think that would be economically objectionable?

A. It would be objectionable to the buyers, I think—

Q. Even to the buyers that wanted to buy—

Mr. Bond: Let him finish his answer.

Trial Examiner Norwood: Finish the answer.

43878 The Witness: I am willing to stop at that point.

By Mr. Wooden:

Q. Is your answer the same even though some buyers wanted the f.o.b. mill method and their competitors wanted the delivered price method?

A. Yes, I think that competitive forces and the pressures that would be brought to bear upon the manufacturers would tend to bring about the adoption of one of those two plans.

Q. Which one?

A. One could not be sure which one.

Q. Which one?

A. One could not be sure which one. My point is simply that I do not think that the two could exist side by side and operate in the same market.

43882 "Q. Now, Doctor, referring to your testimony on page 43175, regarding the zone system of identical

delivered prices among competitors, is it your opinion as an economist that the zone system of pricing can be maintained over large areas in the absence of some form of collusion?")

A. Well, that is very difficult to answer, and I do not think I can. I will say that it is not the type of price pattern that I would expect to find as the result of the working of normal forces.

By Mr. Wooden:

Q. Would you expect it in the absence of price leadership?

A. Well, if you are speaking of the same thing to which I am referring, that, as I said, was more a theoretical concept than anything else, large zones spreading across the United States, then I would have difficulty in understanding how that would come about, except by, oh, Government leadership possibly.

Q. Government leadership?

A. Yes.

Q. You could not understand it on the theory of collusion?

A. No, it would be difficult for me to imagine that actually growing out of collusion, because I would not see
43883 the interest that would be served by doing that; while under a condition of complete monopoly, complete control over prices, they might establish certain patterns of price. I could hardly imagine they would establish that one.

43891 Q. When did you prepare this written statement that you referred to, Exhibit 3464-A to E?

A. If I remember rightly, that was written in its present form more than a year ago. I cannot recall the precise time. I perhaps changed it from time to time, edited it as I thought of it.

Q. Where was it prepared?

A. At my study.

Q. Did you have anyone's advice or assistance in preparing it?

A. No, sir.

Q. Did you submit it to anyone after preparing it before using it on the stand?

A. Counsel for the defense saw it before I gave it on the stand.

Q. Did you discuss it with anyone other than with them?

A. I do not recall that I discussed it with them. Did I discuss it with anyone else? Well, I certainly discussed that subject with a number of my—particularly my colleagues at the university. That has been a live sub-
43892 ject for a long time. Of course, we had discussed the question of the multiple basing-point method from the point of view of public interest.

Q. Did you discuss any prepared statement on this subject with other economists with whom you had attended a conference which you testified about?

A. No, sir; nor did I show it to anyone.

Q. You say it has been in this present form for the last year?

A. Why, substantially. There may have been polishing, rhetorical polishing of the statement. Of course, it has been recopied.

Q. When was it recopied last?

A. Just a short time before I offered it here.

Q. You mean since you came here to testify?

A. You mean the physical typewriting, was that done after I came—

Q. When was it recopied?

A. Yes, that was done after I came to Washington, before I took the stand.

Q. Did you make any changes in the draft before it was recopied into this form?

A. No, sir.

Mr. Bond: You mean after he came to Washington before it was recopied?

The Witness: Is that what you mean, sir?

43893 By Mr. Wooden:

Q. You can conclude that.

A. To the best of my recollection, there has been no change in the draft for a long time. I might be right in saying that it has not been changed at all since last summer a year ago, but I would have difficulty in remembering.

Trial Examiner Norwood: It that this statement here, of his qualifications?

Mr. Wooden: No.

The Witness: No, sir. It is this one (handing a document to the Trial Examiner).

My only purpose, sir, in offering it in that way was to give to the—to give as much precision as possible to my statement of what I considered to be the most important question about this case. Of course, I could have answered it without the paper before me, but on such an important question I wanted to have my words weighed carefully.

By Mr. Wooden:

Q. You say you discussed this particular draft with Counsel for the Respondents. Did you discuss it—

Mr. Bond: He said he did not.

Mr. Wooden: I thought he did.

The Witness: No, sir.

By Mr. Wooden:

Q. What was your testimony, Doctor, with ref-
13894 erence to the relationship between this written statement and your contacts with counsel regarding it?

A. I think I said before that I showed this to defense counsel. I do not recall any discussion of this paper with them.

Q. When did you first show it to them?

A. I have difficulty in placing the date precisely, but I believe it would be last fall, perhaps, a year ago.

Q. Following your showing it to them in the first instance was any comment made regarding it by them?

A. I do not think there was, sir?

Q. Were there any changes made in it following your first showing it to them?

A. I think there were no changes of any—that affected the substance. As I say, I may have polished it up. It was in rough draft in the first place, and I polished it up afterwards.

Q. Did you receive any suggestions from anyone as to the changes that might be advisable in it?

A. No, sir.

Q. Did you receive any suggestions as to the form as distinguished from substance?

A. No, sir.

Q. In other words, as I understand it, this is wholly your own independent production and no one else had any part in suggesting anything that should go in it?

A. That certainly is. And if it is not out of place,
13895 I am surprised that you should ask such a question.

Q. Now, proceeding to your testimony on page 43892, relating to the subject of cross-hauling, and your opinion that it is one of the competitive wastes with which we are familiar in our economic system—

A. Yes, sir.

Q. Referring to your testimony on this page, did you mean to testify that this narrowed-down concept of cross-hauling was the result of natural, independent, non-collusive action, or did you intend to say that it might be so?

A. I think what I—let me see that.

(Mr. Bond hands record to the witness.)

Q. I am referring particularly to your testimony on lines 9 to 14.

A. Oh, this was part of that long answer.

Q. That is right.

A. Well, I do not think at that particular—well; let me read it through since you ask me the question.

(After referring to the record:) I do not think that statement implies anything concerning the origin of the cross-hauling. It is an attempt at giving it proper weight and an evaluation of different methods of marketing.

Q. My question was, Doctor, whether you intended your testimony to which your attention is directed to be that cross-hauling in the cement industry was the result
43896 of natural, independent, and non-collusive action or merely that it might be so?

A. Well, the answer, I think, implies that I thought it was part of a competitive situation.

Trial Examiner Norwood: Was it factual, or giving your opinion on possibility?

The Witness: That it was a natural sort of thing to find in a competitive situation.

By Mr. Wooden:

Q. And natural to find in the cement industry without any collusion?

A. Yes.

43897 Washington, D. C.,
Tuesday, September 17, 1940.

43898 DR. CLARE E. GRIFFIN thereupon resumed the stand and testified further as follows:

Cross-Examination by Mr. Wooden (Continued).

Q. Dr. Griffin, referring to Respondents' Exhibit, for identification, 3464-A to E, and particularly E, is that interlined handwriting, is that yours?

A. That is my writing; yes, sir.

Q. And on Respondents' Exhibit 3464-D, the
43899 word "form" in the margin, is that yours?

A. That is my handwriting; yes, sir.

Q. Now, referring to your testimony on page 43194, in which you illustrate your point about cross hauling by referring to the case of retail milk delivery in a town where different milk dealers are transporting their milk across each other's routes.

(Mr. Bond hands transcript to the witness.)

A. Yes, sir.

Q. Now, there is no common carrier involved there, is there?

A. No.

Q. It is part of the cost of the distribution of the milk companies, there is no freight absorption there, is there?

A. Well, there is freight absorption just as truly whether a common carrier or not. I should say it is freight absorption in the sense that I think I explained yesterday, that the seller is taking a different net return on the part of his business than on another part of his business.

Q. You mean, he is taking a different net profit because of his difference in cost of delivery?

A. Well, if you wish, yes, a different net return.

Q. Do you see no difference between a different net profit and a different net price?

A. I would not use the term "different net price" if I were speaking strictly. Sometimes that slipped into
43900 that usage, but strictly speaking it is a different net return. I think we mean the same thing, however.

Q. Well, all the milk dealer does is to get the same net

price from all of his customers all over town, but has a different cost of delivery in different parts of town; is that not right?

A. I do not know what you mean by "different net price" when you use it in that way.

Q. I did not say "different net price." I said he gets the same net price all over town.

A. Yes, I will answer that in the same way. I did not know what you mean by "same net price"; that would make that statement consistent with what I regard the situation.

Q. Yes. Is there any addition of fictitious freight in the case of the milk dealers delivering in a town?

A. Well, I never have accepted the expression "fictitious freight," anyway. If you have in mind that a dealer selling in a particular part of town happens to be near to his source of supply, that his price, delivered price, is affected by the fact that the other suppliers are more distantly located, I suppose if that is a factor it would have a bearing upon the delivered price that he gets.

Q. But in the case of the milk dealers there is no charge imposed, is there, or included in the price because there is no delivery charge to be made?

43901 A. Well, I do not accept again the idea that charge was included in the price, but it is clear that he does have a cost of delivery. Now, there is no economic significance in the fact that the cost of delivery takes the form of wages to his drivers, and gasoline for his trucks, instead of in a rate that is paid to a common carrier.

Q. You think not?

A. I see no significance.

Q. Isn't it, in the first instance, the seller's own cost, and in the latter instance, particularly if the buyer pays the common carrier, isn't it the buyer's cost?

A. It does not matter whose cost it is. The question is what would you expect would be the effect upon the price,—that is, upon what the buyer pays for what he gets at the place where he gets it.

Q. But if there is a common carrier cost of delivery doesn't the buyer pay it?

A. Yes. The other way—

43902 Q. You won't agree, then, Doctor—I will just sum up one more question.

You won't agree, then, Doctor, that there is any material difference from an economic standpoint as to cross-hauling between milk dealers delivering in different parts of the same metropolitan area and cement manufacturers selling cement and shipping it to a large number of rather distant consuming destinations?

A. You are asking me whether there is any economic significant distinction between the two. Well, of course, there is a distinction in degree. I am citing a simple and homely example. There is, in my opinion, no distinction
in kind, and I would emphasize that I am quite posi-
43903 tive that there is no difference in kind arising out
of the fact that cost of transportation in one case is represented by the charge of a common carrier and in another case it is represented by wages and gasoline payments.

Q. Well; now, at the bottom of page 43194 you say that the advantages of continuous competition in the cement industry at all consuming points more than offset the cost of cross-hauling which any economist must frankly recognize. I want to know what you mean when you say that any economist "must frankly recognize." Do you recognize—

A. The cost of cross-hauling, sir.

Q. You do not mean to say that any economist must recognize that the advantages more than offset—

A. Oh, no, no.

Q. Doctor, wouldn't you consider that the uncertainty of whether competitors will go along with a proposed price advance is a considerable deterrent to the making of price advances?

A. Well, that is difficult to answer that generally. There are some situations in which the mill—in which a mill, a seller,—I am speaking generally now,—in which a seller might advance his price whether the others were going to go along or not. There are all sorts of particular situations.

Q. You cannot generalize whether that particular factor—

A. Well, I think, generally speaking, I am simply saying that there are exceptions, conceivable excep-
43904 tions. Generally speaking, if sellers are selling a homogeneous product in the same market, if the seller

makes a price advance he hopes that his competitors are going to follow, and if he has reason to doubt that they will follow, that would be a deterring fact, has a deterring effect upon the price advance. I refer, of course, to an effective price advance, not one that is announced tentatively for some future time.

Q. Now, referring to your testimony on page 43196, lines 23 or 25, where you testified that the present plan or method of marketing was definitely superior to the uniform f. o. b. mill base method with regard to promptness of service and reasonableness in making adjustments of claims. Will you explain how it is superior in promptness of service?

A. Well, it seems to me that is almost self-evident, that if there are several different sellers who are vieing for the patronage of a buyer at a particular town, that those sellers must keep on their toes, so to speak, in all respects, and that if there were only one seller at that particular town then as to those matters of service and reasonableness in, and eagerness to meet any complaint, and so on, that that would be less pronounced.

43908 Q. And you refer to many other points of superiority in your testimony on that page. What are some of the many other points of superiority?

A. Would you refer me to the page?

Q. Line 24, page 43196.

A. Well—

Mr. Bond: Just a minute (showing transcript 43909 to Mr. Wooden).

Q. Many other points that make for satisfactory treatment of buyers.

Mr. Bond: That is different.

A. Well, that is based upon the assumption, which I think is justified from my observation of business in general, that there are almost innumerable questions that arise between buyers and sellers, and where the adjustment can be made favorable to the seller or the buyer can be quite arbitrary. Now, I cannot specify all of them without knowing the facts of this particular industry, but unless this industry is different from industries in general there would be many of those little points of dispute, and I am confident that if there are several sellers standing ready to deliver this homogeneous product to a given buy-

or at the same price, that the pressure is going to be very strong upon those sellers to lean over backward to be fair, more than fair, to the buyer. Now, I cannot specify just what they all are.

Mr. Porter: Your Honor, may I ask that that answer be read? I think the witness got turned around where he referred to buyer and seller in the early part.

Will you ask that the answer be read?

Trial Examiner Norwood: Read the answer.

(Answer read as follows:

"A. Well, that is based upon the assumption
43910 which I think is justified from my observation of business in general, that there are almost innumerable questions that arise between buyers and sellers, and where the adjustment can be made favorable to the seller or the buyer—")

The Witness: No, obviously. Where the adjustment can be made favorable to the buyer.

Mr. Porter: Or the seller—

The Witness: Or, comma, or the seller can—that is the opposite situation—be quite arbitrary.

By Mr. Wooden:

Q. Are you able to cite any other specific point in which you say from that viewpoint the present plan is definitely superior to the proposed uniform mill base plan?

A. You are referring now not just to this paragraph but any possible place where I could say that one was superior?

Q. I am referring to what you had in mind when you said there were many other points that made for satisfactory treatment of buyers.

A. I think it is quite clear, yes, that that refers to satisfactory treatment of buyers in the same category, same general category, reasonableness of making adjustments of claims, those claims could be of a great many kinds. I do not know enough—could not testify as to the facts of this case, but I suppose torn packages, and
43911 questions of the quality of the product being not quite up to the specified standard would be another example.

Q. Well, you are just specifying different types of

adjustments of claims there, aren't you? I want some of these many other points that you referred to.

A. Well, they do not necessarily have to be adjustment of claims; they could be anticipations of the convenience of the buyer. I—

Q. You cannot specify any of these many other points that you—

A. I can mention a number of others, and I have specified some; yes, sir. It is not necessary to wait until—the seller does not necessarily wait until claims are made to do anything about it. He has a natural eagerness to avoid any possible source of complaint. I think that is commonly observed. If you have several sellers you are likely to get better service, we will say, than if you have only one.

43912 Q. Now, referring to page 43197, lines 1 and 2, you refer to the necessity of meeting competition continuously at every consuming point. Were you there intending to say that the system is one of meeting competition in good faith, or merely that it might be?

A. Well, I think under the assumptions that have been made, I am justified in concluding that there was in this method, I would not say there was a system of doing it, but that there was in this method a considerable amount of meeting of competition, and by my concept of meeting competition in good faith it would conform to that. I realize that that is a legal term, and there are some—and I do not pose as a legal authority to define what is meant by "in good faith."

43913 Q. Now, referring to lines 10 and 12 on page 43197, do you mean to imply by that statement that you considered or assumed that the method of marketing employed in the cement industry could be preserved because it is competitive and coming within the words—type of economic system of free enterprise?

A. Well, I would not make the statement as broad as that, as to say that any system ought to be preserved because it is competitive. There are presumably different forms of competition, one of which might be better than another, and both of them being competitive, but in this particular case the fact that competition does work out in the way that I have described there, point-by-point competition, I think I said that that was important, par-

ticularly important, in an economic system of our kind.

43917 Q. Now, on lines 13 to 17, page 43197, you spoke of the presumption existing in favor of a long continued method of pricing to which investments and channels of trade had become adjusted.

A. Yes, sir.

Q. Don't you recognize that as what is often referred to as "the vested interest" argument?

A. Well, I think that is sometimes called a vested interest argument. You are giving the bad name to it. It seems to me the argument ought to stand on its merits for what it is, and not let that be determined by some label.

Q. Well, do you think the long standing character of a practice creates any economic presumption that it is either competitive or collusive in character?

A. No, I do not think it indicates that, certainly not conclusively, but I do say the long standing practice to which investments have become adjusted is a factor which must be taken into account in considering whether it would be desirable to make a change. Particularly is that true when you are dealing with industries of large capital investments.

43918 Q. Do you think, then, that such long continued conditions to which investments and channels of trade have become adjusted should not be disturbed if it should appear that they are nevertheless collusive or monopolistic in character?

A. Oh, I do not think anything I have said would lead to that conclusion, sir.

Q. Well, I am asking you to state your position.

A. No, I would not consider that that was final in any case. It is a factor to be considered.

Q. Now, when you testified in line 20, page 43197, that you concluded that the adoption by industry of a uniform f.o.b. mill net method would not be in the public interest, did you also mean to imply that the continuation of the present method was in the public interest?

A. I think that would follow from the—that that conclusion would be warranted from my answer when I indicated that I thought there was one, broadly speaking, one alternative plan, and I considered these two and concluded

that it would not be in the public interest to adopt the alternative plan.

Q. You would consider the continuation of the present plan in the public interest regardless of any substitute for it that you can conceive of?

A. Well, I think you are asking the same question again. I have said that it seems to me there is only one alternative plan deserves very serious consideration
43919 as a practical alternative, and that it would not be in the public interest to change to that plan.

Q. Or any plan that you can conceive of?

A. Well, I made the assumption I would not conceive of any other plan that was feasible for an industry of this kind.

Q. Well, I directed your attention to the possibility of a uniform mill base with certain exceptions, and you do not think that is feasible.

A. I do not.

Q. I now understand, Doctor, that you are taking the position that the method of marketing in the cement industry should be maintained regardless of whether it includes a condition of collusion or monopoly, or whether it grew out of such conditions.

A. I think I said before that to my mind, to an economist, the crux of this matter is not the origin of the method, but the way in which it would appear to an economist that it is likely to function.

Q. Well, what is your answer to my question?

A. Is that not an answer?

Q. In a direct way?

Trial Examiner Norwood: Now, from that standpoint, how would you answer the question? Do you want the question read?

The Witness: Yes, perhaps—

43920 Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Now, read the Doctor's answer.

(Answer read.)

The Witness: And considering the method as it has been described in hypothetical questions, it seems to me that it does function and is likely to function as effectively as any feasible alternative.

Mr. Wooden: Well, I submit the witness has not yet answered the question.

Trial Examiner Norwood: And it should be maintained, do you think?

The Witness: I have said, I believe, that it is in the public interest, or that the adoption of the only conceivable alternative would not be in the public interest, which comes to the same thing.

By Mr. Wooden:

Q. Well, my question is, Doctor, whether you think it should be maintained if it should nevertheless appear that it is expressive of a condition of collusion or monopoly?

43921 A. I have indicated that in my opinion this is the type of marketing method that would develop naturally out of normal economic development, and it is not inconsistent with competition, and on that basis, because of the characteristics of this method, and the results that seem to me likely to follow from it, I maintain that it is

43922 not against the public interest. Now, you are asking me to assume, are you, sir—

By Mr. Wooden:

Q. Yes, sir.

A. —that the method originated and does exist as a result of monopoly?

Q. Or collusion.

A. Or collusion. I do not see how I can go further than to say that if you did not have the monopoly or collusion you would have had this method of marketing anyway, in my judgment, and therefore if you do say that you cannot logically say that it grows out of collusion, if the collusion is not necessary in order to explain it.

43929 Trial Examiner Norwood: Now, in answer to the hypothetical question there stated, after a summation of all these features of the method presumably being employed by this industry.

The Witness: Yes, sir.

Trial Examiner Norwood: You stated that it could possibly have grown up without any collusion?

The Witness: Yes.

Trial Examiner Norwood: And now you have told us that you thought it was for the benefit of the public that such a method be permitted to exist. Now, suppose

43930 that you should learn that this method was brought about by agreements and understandings and col-

lusion and monopolistic methods contrary to the first assumption, or your first idea of it, then would you still say that the system should be permitted to exist?

The Witness: That assumption strains my imagination, sir.

Trial Examiner Norwood: It strains your imagination that it might be different from what you said was possible on the one hand?

The Witness: No.

Trial Examiner Norwood: It is possible on the one hand, would it strain your imagination to say that that might not be the case, but it might be something else?

The Witness: I understand Your Honor's question. I am trying to follow it carefully. There seemed to be the implication that not only did this originate away back some time in the distant past, but that it had developed all the way along primarily—

Trial Examiner Norwood: Yes.

The Witness: under,—as a result of agreements, that I say would strain my imagination, but I think, to come to your main point, from the point of view of the economist, the essential thing is how the method does work at the present time? Does it give play to the forces of 43931 competition? And it seems to me that it does.

Trial Examiner Norwood: Regardless of how it was formulated or maintained, or is maintained?

The Witness: Well, now, when you say "is maintained," it seems difficult for me to conceive two things, that it is maintained by collusion, and it does give free play to the forces of competition. Those, it seems to me, are almost contradictory, although I can imagine some special instances in which it might happen.

By Mr. Wooden:

Q. You said, Doctor, didn't you, in answer to a question of His Honor early in your direct examination, that it could be one, or it may be the other; did that strain your imagination then?

A. That the origin could be one?

Q. No, that the method employed.

A. Yes. I think you will find other places in my direct examination, sir, where I tried to clear that up, and I said that while it would be conceivable, that it would be difficult for me to draw that conclusion. I thought it was very unlikely that you could explain the existence of a method such

as this over as large an area, involving as large number of buyers at as many different points, and as many different sellers existing for a considerable period of time, all of that in the picture, that you could conceive that coming about mainly or solely as the result of agreements.

43932 Now, I did not say that that was—I suppose in the philosophical sense—inconceivable, but that it would certainly stretch my imagination a great deal to accept any such conclusion.

Q. Then, I take it your testimony is that in your expert economic opinion the method employed in this industry was not the outgrowth of collusive or monopolistic methods?

A. I think I have been over that many times. The original origin of the plan I do not think anyone could conceive could draw any definite conclusions at this stage about that. They may have been conceived in sin, it is possible. An economist could not definitely say that it was not, but that it could have followed along all of these years with the developments and lead up to the present method with all of the conditions that I have just now applied would, as I say, be difficult for me as an economist to accept that explanation as the main or sole explanation.

Q. Have you accepted the contrary of such explanation?

Mr. Bond: Where? When?

Q. In your testimony anywhere?

A. I have only said in a definite way that the development of—the existence of this method is to my mind quite consistent with the existence of free competition.

Q. And also—

43933 A. Now, if you want to push it on beyond that rather definite statement, on to what I think of the probabilities, then the reverse of the statement I just made a few moments ago would seem to be the one that you are now asking for, namely, that I would think the probability was that the main controlling force here is the normal—or the main controlling forces are the normal forces of competition.

Q. Then, you are expressing the opinion not as to what might be, could be, but of the way—

A. No, sir; no, sir; I am not.

Q. Didn't you just say that the main forces are the—

A. Read the answer.

Mr. Bond: He said if you want the probabilities.

Trial Examiner Norwood: Yes. I think that is clear.

Mr. Wooden: All right.

By Mr. Wooden:

Q. Do you think, Doctor, that the vested interest which an industry has in its becoming adjusted to a certain method of marketing, and its investments becoming so adjusted, should be weighed along with, or weighed against any vested interest that the public might have in the preservation of competition?

A. In the first place, the industry does not have a vested interest in the sort of things that you describe, as I conceive it.

Trial Examiner Norwood: In the second place, would the public have?

43934 The Witness: Does the public have a vested interest?

By Mr. Wooden:

Q. Yes.

A. Vested interest ordinarily implies, I believe, an interest in continuing something that exists.

43935 Q. Now, let us pass on to your testimony on page 43199 regarding dumping.

Do economists consider that dumping in international trade is possible without the existence of some artificial factors, such as a tariff or cartel?

The Witness: Let me have the question, please.

Trial Examiner Norwood: Read it.

(Question read.)

A. On that point, sir, I cannot speak for all economists, but I believe that economists generally would have to recognize that a policy or practice of dumping might grow out of conditions of imperfect competition and out of a situation where there are high overhead costs, and would not necessarily involve the protective tariff or cartels.

By Mr. Wooden:

Q. Suppose you were to assume that the European cement manufacturers came over here and dumped cement at the same price that our domestic manufacturers are making, and that American cement manufacturers went over to Europe and dumped over there at the same price that the European manufacturers were making, would you consider

that consistent with the conclusion that there was no collusion among them?

A. Yes, sir. I would not explain such a phenomenon on the basis of collusion between them.

43936 Q. Would you consider that sound economically also?

A. Yes, sir.

Q. Would you consider that an expression of free competition?

A. Of free competition; yes, sir; under conditions of imperfect competition. I have indicated that there is not a conflict between free competition and perfect competition—I beg your pardon. There is not a conflict between free competition and imperfect competition.

Q. Would you assume that for an industry selling in international foreign markets at lower prices than were obtaining in those foreign markets, that that was also consistent with a competitive situation?

A. Well, it would not be of the normal thing, I think, to expect in a competitive situation. As I indicated previously, I see—

Trial Examiner Norwood: Wouldn't that be consistent with competitive conditions? That is what he asked.

The Witness: Yes.

You said "consistent", did you not, sir, not "inconsistent"?

By Mr. Wooden:

Q. Do I understand you to say that it would be abnormal if European manufacturers shipped cement in this country at less than the prices prevailing here?

A. I think I explained that previously. I will go over it again. But if there were a prejudice in this coun-

43937 try against the foreign product, if there were the suspicion, whether well founded or otherwise, if there were any of those handicaps which a foreign seller had to overcome, then he might attempt to overcome that by offering a lower price.

43944 Q. Again on the subject of dumping, I believe you agree, Doctor, that the effect of the method of marketing is to give each mill its highest net price in its home market, do you not?

A. Yes; I believe I would accept that. Speaking—

43949 Q. And under your hypothesis, of course, you

would not consider competition as one of the things that might eliminate the dumping?

A. I would not consider that the normal forces of competition would lead to the uniform f.o.b. mill method, and I would not eliminate the domestic analogy of dumping.

Q. Now, on page 43206, lines 17 to 22, were you there referring to basing-point systems in other industries of which you were aware when you stated that you considered the cement method competitive because you are aware of the method being used in the other industries?

A. No; I was not referring to other industries at that point. I was referring to the multiple basing-point method as described in the hypothetical questions.

Q. Well, then, you were merely testifying there that the multiple basing-point method in cement was competitive point. I was referring to the multiple basing-point method in cement only.

A. I did not say I was familiar with it in cement.

Q. I think you said it corresponded to a competitive method with which you were familiar. Now, familiar where?

A. Well, in that—I was referring to familiar with the industry as described to me.

Q. And what did it correspond to a competitive method which you were familiar other than the method employed in this industry?

43950 A. Well, I am considering this method as it was assumed to be employed in this industry, or as it might be employed in other industries having substantially similar conditions. Taking that, bearing that in mind, I come to the conclusion that that appears to me to be a normal competitive sort of selling method for industries of that kind.

Q. Well, when you testified on line 21 on page 43206 that the method employed in the cement industry does correspond to a competitive method of pricing with which you were familiar, what did you mean? Were you comparing it with itself?

A. I think the answer will indicate that. If you consider the whole answer, it is quite apparent that a method corresponding in all these respects to the one assumed would be a multiple basing-point method. I am simply saying that if the opinion of the Professor who had testified to the statements made in the question went so far as to

say that it did not correspond to any sort of competitive method of pricing—

Q. I am talking about your testimony, and not about somebody else's testimony, Dr. Griffin.

A. My answer was given in the answer to a question as to whether I would answer the question in the same way.

Q. Were you merely comparing the method of marketing in cement with itself when you said that it corresponded to a competitive method with which you were familiar, or were you comparing it with some other industry?

43951 A. Now, as to the details, it would probably apply only to this industry, but I am saying that that method of marketing under conditions of the kind that were described here I consider to be a competitive method of marketing. In that sense I am comparing it with itself. I am also taking into account, when I say—when I use the words "normal forces of competition," as I have at one point or another, and which seems to be implied here, I am, of course, drawing upon my general observation of American industries. I do not mean to point to another industry specifically in which precisely the same method of marketing exists and to establish a fact of competition existing here by comparing it with that other industry. I am not doing that, sir.

Q. Then, you were just back to your proposition of comparing it with itself on the basis of the assumed facts?

A. Comparing it with itself and with my concept of normal competitive forces, which has been drawn from the study of American industries in general and the working of competitive forces.

Q. Now, on page 43207, lines 20 and 21, you testified you saw no reason for thinking that the method employed has had the effect of raising prices in this industry.

Mr. Bond: That is not the question.

Mr. Wooden: That is his testimony.

Mr. Bond: The question was the practices enu-
43952 merated in your hypothetical question.

Mr. Wooden: Well, I am not talking about your question: I am talking about his testimony.

Mr. Bond: You said "practices employed."

Mr. Wooden: All right.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Finish your question.

By Mr. Wooden:

Q. Have you found it?

A. Yes, I find it.

Q. Is it also your testimony that you see no reason for thinking that the method employed has had the effect of stabilizing prices in this industry?

A. Yes, that would be my opinion; that is, that one could not draw the conclusion that it had.

Trial Examiner Norwood: Could not draw the conclusion that it had the effect of stabilizing prices?

The Witness: Yes, sir.

By Mr. Wooden:

Q. You mean to draw the conclusion that it might not have that effect or did not have it?

A. Well, as I have said many times, I am not testifying as a factual witness. I would not expect it to have that effect as an economist.

43953 Q. And all you meant to say was you would not expect it to have the effect of stabilizing prices?

A. I just answered that question, sir.

43957 Q. Now, referring to your testimony on page 43212 regarding constant differential between base prices between the two adjoining producing areas, doesn't that constant differential tend to keep the market area of the two producing regions constant?

A. Yes.

Q. Would your opinion as an economist be affected if you were to assume that that differential, say, remained 10 cents a barrel without any modification over a long period of years?

A. I do not see that you have changed the question at all, and I have given my answer.

Q. You would not make any change in your answer?

A. No. You mean because of the fact that it was 10 cents rather than some other amount?

Q. Coupled with the fact that you have just admitted, that the market territory is kept constant by that.

A. No, that would not change my testimony.

43958 Q. Could the uniform mill base method maintain the boundaries of territory any more rigidly than that?

A. No, but I see no reason why it should not maintain them just as rigidly, and I never indicated that there is any

difference between the uniform F.O.B. plan and this plan on the boundaries of territories, the difference is that under the present plan people do pass over the boundaries and sell on a freight-absorbing basis; in the other case they do not.

Q. But you also testified that boundaries on a uniform mill method would be continually shifting as the price might change, didn't you?

A. Well, it would shift when the price shifted, yes. But I can see just as good reason for thinking that you would have this continuance of relative mill prices under the one plan as you would have under the other plan; and if you did not have price change, then the boundaries would not change.

43961 Q. Dr. Griffin, referring to your testimony on page 43213, lines 14 to 25, you there agreed that the receiving of different mill nets would be inconsistent with a state of perfect competition, just as and to that extent you were in agreement with Dr. Viner, weren't you?

A. In—yes, without referring particularly to my testimony, I think that would be a correct statement.

Q. And your agreement went to the extent of agreeing that a regular, a recurrent pattern of varying mill nets would be inconsistent with a state of perfect competition?

A. I think that is covered in my statement, that I
43962 would not expect under conditions of perfect competition to find different mill nets.

Q. But outside of the word "particularly" it includes that.

Is it, then, your testimony that while a regular recurrent pattern of mill net variations is inconsistent with a state of perfect competition, that the identical delivered prices which reflect that pattern are explainable on the theory of perfect competition?

A. Well, I would not accept the implication in the question that the identical delivered prices reflect a pattern, but I would expect to find identical delivered price, meaning by that effective price actually paid for a homogeneous product by buyers who have freedom of choice and are well informed, I would expect to find that in any market whether all the conditions of perfect competition were present or not.

Q. Aren't you drawing upon the standard economists' conception that perfect competition would produce iden-

tical or uniform prices; or are you not relying upon that at all?

43963 A. Not knowing what you mean by standard economist, and I am not relying upon that but upon, it seems to me, what is the inevitable result of economic reasoning, and I believe that economists generally would come to the same conclusion.

Q. Then, you are relying, are you not, in your testimony upon the economic theory that in a state of perfect competition the prices tend to become uniform?

43964 A. Yes, I am relying upon the accepted economic reasoning on that point. There is no distinction between so-called standard economists and other economists on that point that I know of.

Q. Now, calling your attention to Dr. Viner's testimony on page 15688, where he was testifying about this particular subject, do you agree with his statement that the point of resemblance in uniformity of delivered price to a competitive price structure should be taken with the qualification that under competition the uniformity would be approximate, or close, whereas in the absence of price competition it may be absolutely uniform, the uniformity may be perfect. Now, do you agree or disagree with Dr. Viner in that testimony?

A. Under conditions of perfect competition the uniformity would be very close, indeed. In fact, I think would leave room only for the deviation that I have mentioned at various times in my testimony; that is, that would arise during the time that a change in price was being made. I have mentioned that at various times, although I have not always included it when I spoke of identity of delivered prices.

43965 Q. So, then, Doctor, uniformity that extended to seven or eight decimals would be an example of very close to perfect competition?

A. No. I have said many times that the uniformity of price does not require all of the conditions of perfect competition. It simply requires those conditions that I have described many times, and arises primarily out of the buyer's choice as between alternative sources.

Q. I want to know whether economic opinion is not to the effect that the uniformity of price even under conditions of perfect condition is not an approximation or a tendency rather than an exact identity?

A. It is a tendency, but with the higher degree of identity of the product the better the degree—the greater
43966 the degree of information of the buyers and their alertness to their self interest; all of those things closely—

Q. Didn't you mention "seller" instead of "buyer"?

A. No, sir. Buyers, they—the closer would be that approximation, and if buyers knew that for identical products prices were varying by any amount that you wish they would presumably favor the one offering the lower price.

Q. In your opinion, did Dr. Viner correctly state the usual economic opinion when he said that this uniformity of price under perfect competition is only approximate or close and not perfect uniformity?

A. Well, if he said under perfect competition, it seems to me that it is not necessary to emphasize the approximation to it, because perfect competition is itself a logical concept and prices, except for the time which is required for one buyer to adjust his prices to a new price situation.

Mr. Porter: You mean one seller, didn't you, Doctor?

The Witness: One seller to adjust his prices to a new price situation would be identical under perfect competition.

43967 By Mr. Wooden:

Q. Do you agree or disagree with that statement?

43968 A. It is impossible to answer it in one word, and I think I have expressed my opinion in the previous answer, that if the product is identical buyers are well informed, and the other conditions that I have mentioned that approximation of which Professor Viner referred would be a very close approximation indeed, and the one variation that I would see from it would be in that time required for the change of price.

43971 Q. Now, referring to your testimony on page 43215, where Mr. Bond asked you about the effect of the pricing system in the cement industry upon, or with relation to economic depression. Now, beginning on line 16 of that page Mr. Bond asked you if you would agree with Dr. Viner's testimony to the effect that the pricing system of the cement industry, as defined in my

long hypothetical question, would tend to produce and intensify a depression. Now, your answer begins on line 21, and runs over to line 16 on page 43216. Now, I will ask you if your answer is not confined to answering the question as though it were posed in terms of prolonging a depression rather than in producing and intensifying it?

(The witness is reading the transcript:)

A. Yes. My answer dealt with the factors that were important for recovery from the depression; first, as to the question as to whether a change in the existing
43972 plan would contribute to that; second, under the assumption that we had had some other plan and would we have gotten out of the depression more quickly.

Q. I will now ask you to answer Mr. Bond's question centering your attention upon the words that he used, with regard to producing and intensifying a depression as distinguished from merely prolonging it.

A. Well, I should identify, or very nearly identify the intensifying and prolonging, but to centering attention then on the producing of the depression, do I think—

Q. Do you think that this pricing system was a factor in either producing or intensifying it?

A. No, I do not.

Q. Do you mean that that is just because you are dealing with one industry here, and one industry would not—

A. No.

Q. —cause it or produce it?

A. No.

Q. Intensify it? All right.

In other words, your answer is the same with regard to production and intensification as it is to prolongation?

A. Yes.

43974 Q. Now, referring to your testimony on page 43219, where you devoted a whole page to answering a question that involved the testimony of Dr. Fetter, I will direct you to lines 16 to 21 on page 43218, and ask if you disagree with any of the statements made there which were quoted as the testimony of Dr. Fetter?

43975 A. In one sense I would agree with some of those statements, but I am quite sure that that would not represent a meeting of the minds of Professor Fetter and myself, because he has explained in his testimony what he means by the expression that price, as applied to a market, priced, in or at a market, is a freightless price; it is

a price; he goes on to say, "which does not include an element of freight. The word 'delivered' price is a compound term meaning both the price of the cement and the price of the freight necessary to transport the cement from the place at which it is sold to the destination."

Now, that last sentence, I would not agree with. The delivered price, to my mind, is a price, is not something that includes two different things. It is what the buyer pays for the product at the point of delivery.

By Mr. Wooden:

Q. Well, you disagree with Dr. Fetter in that respect. Are there any other respects in that same paragraph where you disagree?

A. Well, I said before, I think that we actually would be in disagreement on the other two sentences of the paragraph, although the—because I think when he uses
43976 those words that he is meaning a different thing than I might mean if I used very similar words.

Q. Do you dispute that a competive price in a competitive market as conceived of by standard economic writers excludes variable freights to destination from that market?

A. Excludes the possibility, you mean, of different freights being charged to get to that market; is that what you mean, sir?

Q. No. I think this question may stand. You may have the question read, if you want it.

Trial Examiner Norwood: Read it.

(Question read.)

A. No, if I understand what you mean by that, I do not think that that is excluded. The fact that a number of buyers may resort to a commodity exchange, and that those buyers will have varying costs of getting the product from that exchange to their own places of business, that is not inconsistent with a concept of the market.

Q. Well, the price on that market excludes the variable freight element, doesn't it?

A. Oh, under the condition that I am assuming here, that you have the buyers and sellers meeting at a certain place, which could be a produce market, and taking delivery at that place, then the price at that place would bear no reference to the element or to the later subse-
43977 quent costs of transportation on the part of the buyers to get the goods back to their home towns.

Q. And isn't that what standard economic writers wrote about when they theorized that a competitive price in a competitive market would tend to be uniform at any given time?

A. No, sir; I think not. I think they did not confine it to one type of market. It would be unfortunate if they did so because there are many places where markets could be. Some of them may have used for illustration that type of market, some of them used medieval markets, for example, as an illustration of one form of market, but I do not know of anyone who would assert that that was the only type of market you could have.

Q. Much of the standard economic textwriting on the subject long antedated the time when delivered price systems came into vogue, didn't it?

A. Yes, sir. Well, I suppose so. I cannot tell you when delivered prices came into vogue; I am afraid if I want to be strictly correct, I would have to revise that answer, because I think delivered prices are very old indeed, back to medieval times.

Q. Not so old in this industry, though, according to the hypothetical question.

A. Oh, no, if you are referring to this industry, yes.

Q. Now, in your answer on page 43219, you stated that you thought Dr. Fetter's line of reasoning implied

43978 that price was something made up of a number of elements which can be added together to make price, and that those different elements are cost elements. Could you point me to any place where Dr. Fetter has ever espoused that line of reasoning?

A. Well, obviously, offhand I cannot, and I do not know that Professor Fetter would ever accept that statement made in that way, but I think it is nevertheless true when you say that the price of a product ought not to include a particular cost element, it seems to me—

Q. Do you mean freight by that?

A. Yes. —it seems to me there is an implication that price is made up of cost elements, but here is one that the speaker thinks ought not to be included. Now, my point is that I think you cannot take price and subtract from it certain things in an effort to find what one might like to call true price. Price is what is paid.

Q. As a matter of fact, aren't you well acquainted as an economist, Dr. Griffin, that Dr. Fetter has disavowed

any theory of adding up a number of cost elements to make price?

A. Well, I do not recall where he has specifically disavowed it, but it is possible that he might have done so. I am simply saying that it seems to me this line of reasoning does imply that.

Q. Weren't you prepared to testify that Dr. Fetter was subject to criticism for having omitted the over-
43979 head cost theory in his book?

A. I think that—I do not say "subject to criticism;" I am speaking with all respect to Dr. Fetter.

Q. Oh, yes.

A. But I think that is a factor which should be considered in dealing with a problem of this kind, and he did not, as I recall it, deal with it.

Q. Well, then, aren't you, when you say it should be considered, the one who is espousing the cost theory of price instead of Dr. Fetter?

A. I am just saying that these cost elements do not add up to make price.

Q. You said they should be considered, the cost elements. Haven't you been talking about overhead costs and fixed capital costs as being things that ought to be?

A. I think I see what you mean.

Q. —taken into account in determining price?

A. Yes, costs do have to be taken into account in explaining prices. They have their bearing upon price, but price is not simply the summation of the cost. If prices were always the summation of cost plus a reasonable margin of profit, well, then, prices would never be below cost, would they? So, the cost factors are significant and do have a bearing upon price, particularly in the long run through the effect upon supply of the product being pro-
duced, but that is quite a different thing than to
43980 think of price as being built up from certain cost elements, totaled up, to make price.

Q. Well, if Dr. Fetter's testimony should have been one of disavowing the determination of price by the process of adding up various cost factors, you would agree with him, wouldn't you?

A. Yes, I would certainly agree with that point.

Q. And do you know, after having read his testimony, whether he did disavow that theory of price?

Mr. Bond: That is the second time it has been asked. Doesn't Your Honor think it is worth while—

Mr. Wooden: I want to know whether he has read the testimony.

Trial Examiner Norwood: Let him answer.

A. Well, I do not recall whether he specifically disavowed that or not.

By Mr. Wooden:

Q. Now, referring to your testimony on page 43230. Didn't you there criticize Dr. Fetter for not giving due regard to overhead costs?

A. Well, that is in quite a different connection, sir. Of course, in considering the characteristics of this industry and the nature of the marketing method that develops the phenomenon of overhead costs has got to be considered. Far be it from me to say that cost is of no consequence to an economist. I certainly would not

43981 assert that.

Q. I do not know who would, either.

Suppose, Doctor, price were a collection of different costs plus a margin of profit, and that price determined in such a way was maintained on a homogeneous commodity.

Mr. Bond: What is the question?

Mr. Wooden: All right. I think perhaps that is indicated.

By Mr. Wooden:

Q. What would you say as an economist to that being expressive of a condition of free competition or as to it being an expression of possible collusion?

A. Well, that is even more difficult than some of the other assumptions I have been asked to make. You are asking me now to conceive that price is in fact a summation of costs.

Q. Plus a margin of profit.

A. Which I have just concluded saying it was not. Now, if you mean by this, that in some particular situation business men have arrived at their prices by adding up costs, and then adding a normal margin of profit, or claimed that they have done so, I would say that that is a business man's way of describing something that he does, and that an economist would ordinarily not take him too seriously.

43987 Q. Do you contend it is the opposite of what Dr. Fetter did testify to?

Mr. Bond: Doesn't Your Honor think that is a matter of argument rather than cross-examination?

Trial Examiner Norwood: I think he has answered it. Do you want to make a different answer, Doctor?

The Witness: No. I think we are back to the same point. I am looking at the same sentence there before, in which Dr. Fetter says that delivered price is a compound term, meaning the price of cement and the price of the freight, and I am asked whether I disagree with that, and whether my testimony is at variance with that, and I say that it is at the top of page 43220, and the answer to you, I think that answer is in disagreement with the statement of Dr. Fetter's that I have just read. It was certainly intended to be.

By Mr. Wooden:

43088 Q. You intended your testimony, lines 6 to 10 on page 43220, to be in opposition to and in contradiction of what you thought Dr. Fetter said?

A. Well, I was not referring there to what Dr. Fetter said, but the meaning I was trying to convey there is the opposite of the meaning which I conceived Dr. Fetter is expressing.

Q. And there you reiterated your belief that he was supporting the cost theory of price, didn't you?

A. No. I think that in the answer to His Honor's question that that was not referring particularly to Professor Fetter's opinion.

Q. No, I don't think it was.

A. He was asking a question and I was expressing my view, and I am saying now, as I read it, that that view is in disagreement with Dr. Fetter's view.

Q. In regard to the cost theory of price?

A. No, not particularly, not here, as regards the cost theory of price.

Q. Now, referring to your testimony on page 43225, where you testified about economic inferences to be drawn from assumption that prices were advanced 40 cents a barrel in July, 1932, after a preceding period of abnormally low prices, unusually low prices, considering the conditions of the general business world as they existed in July, 1932, and presumably well known to you, as an economist would you expect, as an economist, that

43089 all competitors would make the same 40 cents a

barrel increase, and that none of them would be satisfied to increase 25 or 30 cents a barrel?

A. Well, if some of them had decided to be content with an advance of 25 cents, when others had raised to 40, then I should say the first ones would have to retreat from their position, come back to 25.

Q. Would you think it odd, as an economist, that under those conditions at that time, with the heavy pressure on sellers, that no competitor was satisfied with a 25 or 30 cents a barrel increase instead of 40?

A. No, I would not think so particularly. One would have to know there how far the—well, would have to have the whole picture before him; or it would be helpful to have the whole picture as to how closely prices had gotten to out-of-pocket costs, whether in some cases they had gone below out-of-pocket costs, and so on, but taking—but even without having specific information on that point, I can well imagine that manufacturers might conclude that this price is unsatisfactory and we are going to try to charge a higher price, that a manufacturer might decide to do that. Now, if other manufacturers also feel that the situation has been unsatisfactory, and they welcome this change, then they presumably will make it. If they do not welcome the change, then the first one will presumably have to retreat. That is normal.

43990 Q. You would not recognize that the ability of competitors to increase the price 40 cents under the conditions of July, 1932, and to be able to maintain it, was any indication that they had somehow managed to neutralize the conditions, the natural conditions of, the unfavorable conditions of supply and demand for a price increase?

A. No, not in a manufacturing industry, particularly in an industry of this kind.

Q. Now, let us assume in that same state of affairs that the concern that initiated this 40 cents a barrel increase made it effective immediately, while the others made it effective only on five days' notice, would that have any bearing on your answer?

A. Would it have a bearing upon my answer, you mean as to whether—

Mr. Bond: Do you contend, Mr. Wooden, that that is supported by the evidence?

Mr. Wooden: Yes.

A. No. That would not have bearing—would not require me to change my answer.

By Mr. Wooden:

Q. Would your answer be changed if you were to assume that the company that initiated that 40 cents advance in July, 1932, had been a company which had had the experience of having a base mill put in, a low base at its mill point, at the first company's mill point?

43991 A. No.

Q. Now, going on to page 43229, with reference to your testimony on policing, where you disagree with Dr. Fetter's testimony that a basing-point system such as this had to be policed. What is your conception of policing, Doctor?

(Mr. Bond hands transcript to the witness.)

A. Why, I would suppose that a person who had used the term would mean a regular system of examinations, surveillance, and to police a thing usually means you have some people specifically designated to do it, to see that the rules or the laws, ordinances, and whatever you have to deal with, are being observed.

Q. Would you include the filing of prices with a central agency as a form of policing?

43992 Q. What is the answer?

A. What is the question?

Trial Examiner Norwood: Read the question.

(Question read.)

A. Oh, I suppose a requirement, if it could be enforced that all sellers should file their prices would be helpful as a part of a policing system. I would not say that that in itself constituted policing.

Q. Well, aside from a requirement. Suppose competitors had a volunteer method of reporting their prices to a central agency, wouldn't you class that as a form of policing?

A. No, sir.

43997 Q. Don't you understand that the sellers of cement say to the different customers that "because you live at so and so and want your cement delivered there I am going to take a dollar and a half mill net from you," and to another customer, "because you live at a different place I am going to take a mill net there of $2 from you"? Isn't that what is done?

43998 A. Well, I do not think that that is a very accurate description of what they would say to them. What they are saying to them is that "a certain price ex-

ists at your market and we are going to meet that price." But—

Trial Examiner Norwood: But would that be in substance what they do?"

The Witness: Then in doing that they may have to accept a lower mill net to some of those customers than to others. But I still insist that that is not arbitrary. It is a lower mill net that arises out of the certain location and the competitive situation that exists at that location. Any individual who wants to live in that town can presumably buy cement at that price, and from this buyer, as far as I know. In that respect it is no more arbitrary than the railroad situation we described.

43999 By Mr. Wooden:

Q. Now, Doctor, on page 43231 Mr. Bond put to you the same hypothetical question that I put to Dr. Fetter, which I had put to him on page 17755, and my question asked whether the method employed as described in my question could exist or be maintained as an expression of the economic law of supply and demand.

Now, when you undertake to answer that question at Mr. Bond's request you say that you do not know what that means. Do you mean when you say that you do not

44000 know what it means, that there is some effect from the conditions of supply and demand even where monopoly or collusive arrangements exist, and therefore that it may exist consistently with the law of supply and demand?

A. As far as the law of supply—

Mr. Bond: May I show him what he did say (handing record to the witness).

The Witness: You are asking me now what did I say there, or are you asking me the question now?

By Mr. Wooden:

Q. I am asking what you meant there.

A. And the question is, now that I have read this?

Q. In other words, you did not answer the question that was posed to you by either Mr. Bond or myself about Dr. Fetter.

A. No—

Q. He said an expression of the economic law of supply and demand, and you answered another question, which was

not asked, to the effect that it was consistent with the law of supply and demand. Is that correct?

A. That is correct. I explained in my answer that I did not know what you mean by saying that a system is an expression of the law of supply and demand.

44001 Q. I take it, then, you did not mean to testify here where I directed your attention to the effect that the basing-point system of identical delivered prices about which I asked Dr. Fetter neither was nor was not an expression of the economic law of supply and demand?

44002 A. I think the answer speaks for itself on that. I indicated that I did not know what this term "existing as an expression of the law of supply and demand" meant. I went on to say, and I still say, that if it does mean the existence of such a method—is the existence of such a method consistent with the operation of the forces of supply and demand, I would say that I think it is.

44003 Q. And even a base mill, when it went into territory where another base price controlled, it would be acting just like a non-base mill in that territory, wouldn't it?

A. A base mill sells in another mill's territory on a freight absorbing basis. Then the question they have to decide is whether or not they will accept a lower mill net on that part of the business.

Q. So regardless of whether you were talking about a non-base mill or base mills under those circumstances, you understood the reference to the price as being the reference to their mill net?

A. In that case, yes. I have, I fear, at various places used the term "price" at points where I, to be very precise, should have used the term "mill base."

44005 Q. Do you recall having written for publication to the effect that since the turn of the century there has been a tendency for industries reaching a stage of cautious maturity and that their position tended to dominate the national scene?

A. Those words do not sound exactly like mine, if you have read it correctly. Could I see the passage?

Q. Yes. I am referring to an article purporting to have been written by you and published in a magazine entitled "Vital Speeches of the Day," under date of May 15, 1938, and the article is entitled "Education Looks at Business and Makes Suggestions." Is that your article (showing a booklet to the witness)?

A. Yes. Where is this statement to which you refer?

Q. The first one I referred to is on page 469, and the second I referred to—I am sure it is here.

A. I think it is here, but I would like to see the exact wording.

Q. Here it is right here (indicating).

Also on the same page: "Since the turn of the century the industries which have grown to a stage of cautious maturity have been tending to dominate the national scene."

44006 A. Yes. The whole sentence was: "There will always be, of course, some industries in a country which have grown to this stage of cautious maturity and others that are in the stage of youthful striving and vigor, but since the turn of the century the former have been tending to dominate the national scene, in spite of the disturbing factors of the automobile industry and commercial aviation."

Q. Now, would you say that the cement industry was one which had grown to this stage of cautious maturity as distinguished from one of youthful striving and vigor?

A. That would be decidedly a question of fact.

Q. As you understood it.

A. To determine that in fact would require that one would know the rate of the growth and whether it had slowed down; I mean whether it had—whether its productive capacity had remained substantially the same for a long time, and so on.

Q. Well, don't you in your writings and in this particular article that I called your attention to point out that the factors of overhead cost entered into the situation of cautious maturity?

A. Yes, I was referring there—I do not see the connection with this problem—I was referring to the fact that businesses as they have large capital investment and high overhead costs and other characteristics of some modern industry tend to become conservative.

44007 Q. And didn't you point out in the course of your article that that tendency to become conservative led to such things as a tempering of competition in order to protect the interests of established business?

A. How does that statement go? I would like to know the context of that one. You may read it.

Q. You said in this article: "I refer particularly to

the tendency of trades, industries, and workers to organize into self protective groups with the object of guaranteeing preservation to all members of the group."

A. Yes. I remember saying that. I think it is—

Q. Didn't you also point out that that tendency was one that was promoted by and favored by business men?

A. Oh, I am quite sure I would not have generalized it quite as broadly as that. Would you read the quotation?

Trial Examiner Norwood: Now, does this contradict the witness in any way?

Mr. Wooden: Your Honor, I contend that it does tend to show the witness' testimony is inconsistent with what he has written.

Trial Examiner Norwood: Go ahead.

The Witness: Would you read the statement that you want me to comment on?

Mr. Wooden: What is the state of the record

(Record read.)

44008 By Mr. Wooden:

Q. Didn't you write to the effect that it must be remembered that the N.R.A. philosophy was set forth by business men before it was adopted by the Government and that in spite of its practical difficulties there are many business men in the country today who are in sympathy with its fundamental principles?

A. Yes, I think I wrote that. It is not making a generalization concerning all business men.

Q. Didn't you write also to the effect that the central principle of the N.R.A. philosophy was to temper the force of competition?

A. I think I did.

Q. Didn't you attack or criticize that philosophy?

A. Yes. I never did like the N.R.A. philosophy, if that is what you are asking. But I do not see what this has to do with this problem.

Q. Didn't you write in this article to the effect that the supporters of the N.R.A. philosophy were not true liberals?

A. That statement, if I did make it—that statement to be understood would have to be—

44009 Trial Examiner Norwood: Yes.

If you can show anything he says there that is inconsistent with his testimony—

By Mr. Wooden:

Q. Well, Doctor, didn't you write in this article that I have called your attention to the effect that

A. If you will quote the lines, I will take your word for it.

Q. I am trying to shorten it.

A. Do not paraphrase, please.

Q. Didn't you say that the only new thing about such a policy of tempering competition was that anyone should support it in the name of progress?

44010 Mr. Bond: I object, unless Mr. Wooden will state he is reading from the article.

Mr. Wooden: All right.

Mr. Bond: Verbatim.

Trial Examiner Norwood: I think he is reading from it.

You are reading from it, are you not?

By Mr. Wooden:

Q. Didn't you write that "The only new thing about such a policy"—referring to the N.R.A. philosophy of tempering competition—"is that anyone should support it in the name of progress"?

Mr. Bond: Then I object again, because we are back on N.R.A., about which he has not testified in this whole case.

Trial Examiner Norwood: Objection overruled.

Let him answer.

A. Yes, I wrote that. I still believe it.

By Mr. Wooden:

Q. Didn't you—

A. I still believe that a policy of preventing by Government restriction business men from doing things that they might do under competitive forces is of that sort that I am talking about. And I disapprove there, and I think I would still write the same way today.

44011 Q. Didn't you write this: "These and other evidences of a growing tendency to conservatism all indicate that business, even in this most dynamic of all countries, is in danger of falling back again to a defense of the status quo"?

A. You are asking did I write that? Yes.

By Mr. Wooden:

Q. Haven't you been here defending the status quo in this industry against a charge that the status quo had been brought about by certain forms of collusion?

44012 A. Strictly speaking, Your Honor, I think I have not been here defending anything. I have been here as an expert witness to answer questions as directed to me by counsel on either side. I have attempted to do so.

By Mr. Wooden:

Q. Well, haven't you in your testimony about high overhead costs and fixed capital costs as being factors here been bringing out the very forces of conservatism which you criticized in your writings?

A. Oh, I did not criticize them, sir.

Mr. Bond: I still object.

Trial Examiner Norwood: Objection sustained.

You can prove these statements and argue to the Commission that he is inconsistent, and so on.

Mr. Wooden: Well, may I have this article of his marked for identification, Your Honor?

Trial Examiner Norwood: Yes.

The Witness: I am flattered, sir.

(The article was marked for identification "Commission's Exhibit 3263-A to 3263-D.")

44013 By Mr. Wooden:

Q. Now, Doctor, you identify this paper, that is marked "Commission's Exhibit 3263-A to D," inclusive, as your article (showing the document to the witness)?

A. Yes.

The official publication of the article was in the proceedings of the American Association of Collegiate Schools of Business. This is in a sense a reprint of that, but I think it is probably correct.

Mr. Bond: May I ask one question on that point?

Trial Examiner Norwood: Certainly.

Mr. Bond: Is it a complete reprint or is it a reprint of portions?

The Witness: It is a complete reprint.

By Mr. Wooden:

Q. Doctor, did you write in this article that if business did revert to conservatism the age of progress on which modern capitalism is based will come to an end?

Mr. Bond: I still object.

Trial Examiner Norwood: Let him answer.

Objection overruled.

A. I think I recall something of that sort. I was lecturing to a group of business men, and I was referring to the danger of certain philosophy being accepted generally by business men of the country.

44014 By Mr. Wooden:

Q. When you were testifying regarding the influence of overhead costs and capital costs on this industry, weren't you referring to certain conservative factors?

A. I think those factors tended to make for conservatism, but I never did criticize those factors. To use an expression that you did a moment ago, that would be like criticizing the forces of nature. I was simply observing that they were there.

Q. You pointed out certain serious results from those factors, didn't you, from the standpoint of public interest?

A. No, I would not accept that statement. But the article is there; it will speak for itself.

Mr. Wooden: Now, may I have another article marked. (The article was marked for identification "Commission's Exhibit 3264-A to 3264-F.")

By Mr. Wooden:

Q. Now, Doctor, I am showing you an article, marked "Commission's Exhibit 3264-A to F," inclusive, for identification, and appearing in "The Journal of Marketing," for April, 1939. Is that your article?

A. That is my article.

Q. Entitled "The Economic Significance of Recent Price Legislation."

Now, Doctor, in that article did you write that progress and change were costly and involve a high rate of

44015 obsolescence of physical equipment?

A. You will save time in reading the statement. I will assent to that. It sounds very much like something I might have said.

Q. Did you write that that cost is particularly burdensome to a highly capitalistic society?

A. Yes.

Q. Did you write that the forces of conservatism represented by the tendency to prevent a high rate of obsolescence to physical equipment and other forces—

A. You are paraphrasing now.

Mr. Bond: Just a moment.

I am going to object. I think this indiscriminate reading from a series of articles without any foundation for the different quotations is entirely improper. It does not contradict anything the witness has said.

Trial Examiner Norwood: Do you object because the paper itself is not in evidence?

Mr. Bond: No. I say this is not the proper way. There is no basis laid for these statements. They are not in conflict with his testimony. There is no basis laid for their production.

And I would like an exception to this entire line.

Mr. Wooden: The witness has many, many times in his direct testimony talked about the influence of high
44016 overhead costs and fixed capital costs in this industry. I am citing him where he has written that progress and change require a high rate of obsolescence.

Trial Examiner Norwood: I think that he has a right to ask him those things on cross examination, and you have a right to put in the paper.

Mr. Bond: And I may have an exception to the entire line?

Trial Examiner Norwood: Yes, Counsel has his exception.

Go ahead.

A. Well, it is quite evident that change in the technical methods of production would bring about an obsolescence. The higher the rate of change the higher the degree of obsolescence.

By Mr. Wooden:

Q. Didn't you write that ultimately the force of conservatism become strong enough to place an effective check upon change and then the period of progress comes to an end?

A. I think I recall saying that. But I think that no one should draw conclusions from that without reading the whole article, pursuing the line of thought.

Q. Well, didn't you write that the most obvious remedy for the ills of any group was to defend it against competition and aid it in restricting the supply of goods?

A. You are reading from the article?

44017 Q. Yes.

A. Verbatim?

Q. I did not read the whole paragraph in which that language occurred.

A. I am sorry to take time, but before I say that I said that I would have to have it read just as I said it.

Q. All right.

(Showing the article to the witness:) I am referring to page 372 of the magazine, Exhibit 3264-F. Didn't you there say, "The most obvious remedy for the ills of any group is to defend that group against competition and aid it in restricting the supply of goods or services which its members uncontrolled would produce"?

A. It is clear from that—I did say that. It is clear from the preceding sentence I was referring to restrictions upon supply of goods made by legislative act as it applied to farmers, as is applied to laborers, as is applied to retailers, and so on.

Q. The effect would be the same no matter what caused it, wouldn't it?

A. Yes, I suppose so.

Q. Didn't you say that the solution which seems so obviously appropriate when applied to separate groups spelled economic suicide or at least stagnation when applied to all of them?

A. Yes. I still do.

44019 Washington, D. C.,
Wednesday, September 18, 1940.

44020 DR. CLARE E. GRIFFIN thereupon resumed the stand and testified further as follows:

Cross-Examination (Continued) by Mr. Woodcock.

44025 Q. Now, referring to Commission's Exhibit 3264-A to F, inclusive, did you there in that article published by you in the—written by you and published in the Journal of Marketing of the American Marketing Association, state that there was serious danger that the system of free enterprise would be still further impaired unless we considered the restrictions of competition in terms of general welfare rather than in terms of the welfare of individual groups?

Mr. Bond: Are you reading or paraphrasing, Mr. Wooden?

Mr. Wooden: Partly one.

A. I cannot remember whether I said exactly—

Mr. Bond: Just a minute.

A. (Continuing) —that. It does not sound like my language. Would you mind reading the precise statement?

By Mr. Wooden:

Q. Yes. On Commission's Exhibit 3264-F: "If the people of the country and our legislators in particular do not develop a willingness and an ability to set such measures," meaning various price maintenance laws, that you were referring to, "in terms of the general welfare rather than considering them separately, group by group, 44026 there is serious danger that the system of free enterprise will be still further impaired."

A. That it—

44027 Q. You did so state, I believe, Doctor?

A. As you read it last, not as you paraphrased it, sir.

Q. All right.

A. And as read it is apparent that I was directing my attention to measures on the part of the Government to protect certain economic groups, to set up marketing methods or restrictions upon marketing methods to change the advantages which might naturally have existed without those over some other group of people.

Q. You were referring to measures of legisla-
44028 tion which had the effect of restricting price competition, weren't you?

A. Yes, of protecting one group of people as against another group of people in general.

Q. Well, when you—

Mr. Porter: Well, let the witness answer.

Mr. Wooden: Pardon me.

Mr. Bond: Did you finish?

A. What I am saying, I think it is—perhaps you are justified in lifting one sentence—what I am saying in both of these articles, is to express a general philosophy regarding a general social philosophy to the effect that I believe strongly in the forces of competition and of free enterprise; did not express my opinion as to what particular marketing methods best carried out or would en-

able those forces of free enterprise to work themselves out. I see no inconsistency between the position there and the position of expressing the opinion that a particular method of marketing under consideration here does give free play to the forces of free enterprise as effectively as one could expect under any system, or under any method in view of the basic characteristics of this industry.

By Mr. Wooden:

Q. Well, in testifying as you did to the effect that the continuation of this method was in the public interest, do you agree that its desirability from the public standpoint should be considered,—from the standpoint of gen-
44029 eral welfare rather than the group welfare of the particular industry?

A. Obviously; public interest and general welfare, I should say, mean the same thing; to my mind they do.

Q. As distinguished from the welfare of the individual groups?

A. Well, theoretically, all individual groups are part of the general public, and must be considered in the general welfare, but I would not let the consideration of any individual group, particularly a small group, would not let that weigh very heavily in the consideration of public interest or general welfare.

44035 "Q. Well, isn't an economist in some danger of drawing erroneous conclusions if he undertakes to analyze results without taking into account motives and methods, also of being in the position of rationalizing and giving good reasons as distinguished from real reasons?")

A. Well, I suppose anyone explaining any complicated situation must always guard himself against the danger of trying to give good reasons instead of real reasons.

An economist is trained, and by experience and practice should have some ability in viewing economic questions objectively, and—

By Mr. Wooden:

Q. And, in other words, distinguish between good and real reasons?

Mr. Bond: Now, just a moment. The Doctor was in the middle of a sentence.

Trial Examiner Norwood: Well, had you finished your answer?

The Witness: Yes, that will be enough.

44036 By Mr. Wooden:

Q. And being able to distinguish between good reasons and real reasons?

A. I take it that is what we mean by a scientific attitude, scientific point of view. An economist, of course, ought to strive for that point of view, and I think that by his experience in dealing day by day with economic problems which are usually pretty complicated, and sometimes do have their emotional aspects, by his experience in doing that he should gain some ability in maintaining an objectivity on economic questions.

Q. You recognized that distinction between good reasons and real reasons, did you not, in this article which is marked for identification as Commission's Exhibit 3264?

A. Yes, sir. I do not recall mentioning it there, but I recognize that distinction.

Q. Didn't you recognize it there?

A. Well, if you say so.

Q. Well, I want you to satisfy yourself that you did (handing the exhibit in question to the witness.)

A. I was speaking there of the passing of certain laws and the demanding of certain laws, and referring to the rather obvious fact that the reasons that people give for wanting certain laws passed are not always the real reasons, but are, frequently, so-called good reasons. I
44037 think there is nothing startling about that.

Q. And the laws referred to were laws restricting price competition?

A. Particularly, I was referring to them at that time.

Mr. Bond: May I speak off the record a moment?

Trial examiner Norwood: Off the record.

(Short statement off the record.)

Trial Examiner Norwood: On the record.

By Mr. Wooden:

Q. Didn't you recognize that in dealing with such questions when you wrote your article, that it was important to ascertain motives, among other things, before you could find the real reasons for laws restricting price competition?

A. It seems to me you are stating a self-evident fact. Is it necessary to find motives before you can find real reasons. The people have motives and the real reasons are the same thing, are they not?

Q. Well, now, Doctor, will you say that in your testimony in answer to Mr. Bond's hypothetical questions you were or were not giving good reasons as distinguished from real reasons?

A. The question, of course, challenges my integrity as a scientist, as a social scientist, but I will answer it nevertheless.

I was, to the very best of my ability, being objective.

In other words, I was dealing with what I consid-
44038 ered real reasons, and not good reasons in the sense that you are now using that phrase.

Q. Although you did not take motives into account?

Mr. Bond: He did not say that.

Trial Examiner Norwood: Let him tell us.

A. I took into account the assumptions that were placed before me in answering questions that were based upon those assumptions, as I understand an expert witness is expected to do.

By Mr. Wooden:

Q. How much time have you spent, Doctor, in connection with this proceeding?

Mr. Bond: May I hear the question, please?

Trial Examiner Norwood: Read it.

(Question read.)

A. Do you mean—

By Mr. Wooden:

Q. Since you were first employed to give advice concerning it?

A. Do you mean how much time have I spent in reading, considering, discussing the basing-point method?

Q. Since you were first retained in connection with this case.

A. I could not possibly state, sir. The subject of basing points is one that naturally occupies attention in
44039 my classes. It has been the subject of discussion in seminars. I have been on doctoral committees where theses dealing with the general subject of price variations, geographic price variations, were considered for the direction of graduate students in connection with it.

I could not possibly state the amount of time. A substantial amount of time. It has been one of my major interests for the past two or three years.

Q. Approximately how much time have you given to the subjects about which you have been testifying since your first retention for advice on the case here?

Mr. Bond: It is the same question.

Trial Examiner Norwood: I think that is an identical question.

Mr. Wooden: I want to know how much time he has given.

Trial Examiner Norwood: And I think that you probed him on that before this, on a previous occasion.

Mr. Wooden: No, we just barely touched upon that one conference that he attended.

Trial Examiner Norwood: Can you answer that question, Doctor?

The Witness: No, sir; I could not, because my testimony has covered every basic concept of economics and all sorts of questions, I suppose.

By Mr. Wooden:

44040 Q. How much time, approximately, have you spent in preparing for your testimony in this proceeding in consultation with Respondents in that connection?

A. Well, I cannot answer that question, either, sir. You see that, a person has certain questions before him. He is turning them over in his mind, talks with his colleagues about them, he reads about them, and there is no way of saying precisely how much—

Q. A matter of months, or weeks, or what? I do not expect it exactly, of course.

A. Well, it certainly would not be months consecutively, doing that and nothing else.

Q. The sum total, I am referring to.

A. I could not possibly estimate that. I simply say, if you know how a university professor works, that he has certain subjects that are of prime interest to him at the time, his reading is directed that way, his thinking, his discussion, and I could not possibly break that down into hours or days or weeks or months. I would say that a considerable amount of my attention in the last three years has been devoted to this general question.

Q. Well, since you were first retained in connection with this case, what has been the total amount of your compensation and its nature, or what is to be its total amount and nature?

Mr. Bond: I object. I do not see its relevancy.

44041 The witness was accepted as a qualified expert economist. We did not ask that question of any of their experts.

Mr. Wooden: I mean, compensation from Respondents, of course. I want that very clear.

Trial Examiner Norwood: The objection is sustained.

Mr. Wooden: Well, Your Honor, I contend that anything that goes to the weight of a witness' testimony affecting the pecuniary interest he may have in giving his testimony is a logically and legally relevant fact.

44043 *Redirect Examination By Mr. Bond.*

Q. Doctor, is your compensation in any way contingent upon the outcome of this case?

A. It certainly was not, and is not, and is not anticipated to be—any way you want to put it.

Mr. Bond: If Your Honor please, I shall be able to hand to Your Honor in a moment proposed corrections of the testimony through September 13th, so far as they have been agreed on by Counsel. Because certain matters were not matters on which an agreement could be reached, I shall have to ask the witness as to the correctness of the record at certain points.

By Mr. Bond:

Q. Doctor, showing you your testimony at the top of page 42951, where you were testifying as to the meaning of the term "imperfect competition," I will ask you to look at that and state whether you wish to add

44044 anything to your definition of the term?

A. Oh, there is an obvious addition which should be made, though I think perhaps it might have been assumed. I said in the last sentence that "In fact, any of the departures from the assumptions of perfect competition would give you the situation of imperfect competition." I should add, except a departure which leads to monopoly.

Q. Now, on page 42956, I call your attention to line 6, and ask you whether your testimony at that point has been correctly transcribed.

A. Well, the word should be "handicraft" instead of "handcraft." I think that is obviously a stenographic error.

Q. On page 43001, line 6, is that a correct transcript of your testimony as given?

A. Are you referring to line 6?

Q. Yes; to the last word in the line.

Mr. Wooden: Your Honor, I object to the question being put as to whether it is a correct transcript of his testimony. If he wants to ask him whether that correctly reports what he intended to say as distinguished from what he did say, I have no objection.

Trial Examiner Norwood: Well, I think he can give us his opinion as to whether this is a correct report of what he said.

Mr. Bond: Exactly.

44045 Trial Examiner Norwood: It comes to the same thing.

A. Yes. There are two errors in line 5; the definite article "the" should be deleted; and in line 6, the last word should be "distribution" instead of "competition."

By Mr. Bond:

Q. And will you read the sentence, then, as it should have been transcribed?

A. "In my best opinion, the balancing of the costs of cross-hauling, on the one side, with the advantages of the day-by-day and continuous competition, on the other side,—I do not believe that taking of all that into account, —that it has the effect of increasing the costs of distribution."

Q. On page 43003, in line 17, is your testimony transcribed correctly?

A. Oh, obviously I did not say that. It should read, "Now, as each one tends to feel a direct responsibility," instead of "decrease responsibility."

Q. On page 43006, in line 4, is your testimony transcribed correctly?

Mr. Wooden: We agreed to that word "stock" going out.

The Witness: "Stock" should be deleted.

By Mr. Bond:

Q. On the same page, in line 21, is your testimony transcribed correctly?

44046 A. Clearly not. The word "not" should be deleted. The word "in" should be deleted, and "to meet" should be inserted between the word "made" and "competition," so that part of the sentence will now read, "Now by very definition the sales of a non-base mill are sales that are made to meet competition."

Q. On page 43027, in line 8, is your testimony transcribed correctly?

A. It is not. The word "should" should be "could"; should read, "Now, conceivably the market could be at the point of production."

Mr. Wooden: I renew my objection to the question as to whether it is transcribed correctly as distinguished from a correction that the witness is making in the transcript.

Trial Examiner Norwood: I will overrule the objection.

The Witness: That was not transcribed correctly. I am sure I never said that.

Trial Examiner Norwood: The objection is overruled.

By Mr. Bond:

Q. On page 43050, in line 16, is your testimony transcribed correctly?

A. No. The word "not," the third word in that line, should be deleted. That part of the sentence should read, "I mean acting individually."

44047 Q. Showing you page 43229, I will ask you whether in line 15 your testimony was transcribed correctly?

A. No. The word "competitor" should be deleted, and in place of it the words "the latter." That part of the sentence will then read, "Then I say that the latter is acting competitively."

Q. Showing your your testimony on page 43312 in line 8, I will ask you whether your testimony is transcribed correctly at that point?

A. No. There should be a word "not" between "and" and "one." That part of the sentence will then read,—

that line will then read, "many, and not one that economists usually have in mind when they".

Q. Showing you page 43337, and calling your attention to line 15, I will ask you whether your testimony is correctly transcribed at that point?

A. Obviously not. In place of "I," it should be "they." The sentence, or that phrase, clause, will then read, "and they certainly have not done it so far."

Q. Calling your attention to page 43600, line 19, I will ask you whether your testimony is correctly transcribed?

A. No. The word "not" should be inserted between "are" and "competing." The line will then read, "They are not competing. They are competing to get as large"—should I read the whole sentence to make that clear?

Q. I think if you will read the sentence in which
44048 you are making the change, read it as it would now stand.

A. The sentence in which the change should be made correctly reads as follows: "I pointed out in direct that that does not mean that they are not competing."

Q. Now, on page 43635, in lines 9 and 10, is your testimony correctly transcribed?

A. In line 9, the word "not," appearing between "was" and "inevitable" should be deleted. The sentence will then read: "Well, I meant that in the nature of the case an economist would not have—would not conclude that there was an inevitable necessary," and in the next line the word should be "effect" instead of "effects," "inevitable necessary effect of restricting competition."

Q. On page 43658, in the third and fourth lines, is your testimony correctly transcribed?

A. I believe what I said was as follows: Well, every time I use the expression I intended, but did not always insert the word "effective" price—quotations are on "effective."

Q. On page 43747, tenth line, is your testimony correctly transcribed?

A. No, sir; it is not. The word "natural" should be changed to "unnatural."

Q. On page 43929, in the thirteenth line, is your testimony correctly transcribed?

A. Very definitely not. The word "now" in the
44049 middle of that line should be changed to "not."

That part of the sentence should read, "I am not in favor of collusion and monopoly as a general thing."

Q. Now, Doctor, calling your attention to page 43402, and the question which begins in the eighth line, and which, as the transcript reads, as follows:

"Q. (By Mr. Wooden) And would you say that they would act differently if they did not know it?"

Did you answer that question as the question is transcribed, or did you answer the question as though it were stated affirmatively and not negatively?

A: No. I recall that point quite distinctly, and I certainly answered the question as reading: "And would you say that they would act differently if they did know it?" And my answer is quite consistent with that,—the question; would not be to the other.

Q. Now, calling your attention to your testimony on page 43427, beginning in line 4, where you were answering a question which the Examiner asked you, do you wish to amplify the statement which you made in answer to His Honor's question?

A. Well, I think perhaps I should, because answering it in that very brief way—

Trial Examiner Norwood: What was the question and answer there?

The Witness: The question, sir, was this: "I will explain what I mean by 'phantom freight.' It is the amount that is included in the price as freight but is not the actual freight paid, and a certain part of it is not freight at all but is called freight. Did you consider that in your answers to these hypothetical questions?

"The Witness: Your Honor, that goes to my whole concept of price, which I discussed at some length, and I do not want to go through it again. I do not conceive of freight as being a part of price. Freight is what is paid for the thing at the point of delivery."

And perhaps in trying to be brief, I left the wrong impression. I meant by that what I have stated at other places, that I did not think of—I do not think of price as being a summation of certain costs. I did not mean that price, that true price was the delivered price after deducting freight. That is a different matter.

Mr. Porter: I think you misquoted yourself there;

you said that "freight is what is paid" for a thing. I think you meant "price."

The Witness: Yes. Could I have that read?

(Answer read as follows:

" 'The Witness: Your Honor, that goes to my whole concept of price, which I discussed at some length, and I do not want to go through it again. I do not conceive of freight as being a part of price. Price 44051 is what is paid for the thing at the point of delivery.' ")

The Witness: Price is what is paid for the thing at the ~~point of~~ delivery. The word "price."

The Reporter: Shall I make the correction?

Mr. Wooden: I want the record to show just what the Reporter took.

Trial Examiner Norwood: Now, correct that particular word there "price."

44056 CORRECTIONS

Page 42946, line 3, change the word "points" to "point."

Line 13, insert "has" between "it received."

Page 42950, line 6, insert "of" between "cost production." Line 8 should read: "this: 'a timeless and frictionless shifting.' Will you explain." Line 16, change "of any" to "or in."

Page 42953, line 4, change "word" to "world"; delete "and." Line 25, delete the word "of" between "use the."

Page 42957, line 15, change "that" to "than."

Page 42964, line 17, insert "if" between "that each."

Page 42965, line 12, change "probably" to "probable." Line 13, change "implied" to "implies."

Page 42966, line 19, change "one" to "one's."

Page 42980, line 18, change "subjects" to "assumptions."

Page 42983, line 4, change "cost" to "cause."

Page 42986, line 1, delete "exisfence of the." Line 25, change "the" to "that."

Page 42987, line 21, insert "Why" before the word "Did." Change "Did" to "did."

Page 42989, line 10, change "bulkness" to "bulkiness."

Line 21 should read: "sort of thing I have in mind here would be sand or gravel where".

44057 Page 42990, line 20, change "scattered" to "concentrated."

Page 42991, line 10, change "ground of" to "grand." Line 19, should it not be "then" for "in"?

Page 42995, line 5, change "my" to "by." Line 13, change "dessultory" to "desultory." Line 20, insert "volume" between words "reduce" and "a."

Page 42999, line 13, change "he" to "they."

Page 43001, line 5, delete "the" between the words "that" and "taking."

Page 43006, line 4, delete word "stock" at end of line.

Page 43014, line 1, delete "," after the word "indicated."

Page 43018, line 11, delete the word "not" between words "was a."

Page 43023, line 14, change "instance" to "instant."

Page 43028, line 10, should read: "Comparison of values took place there."

Page 43029, line 4, should not "an" be changed to "and"?

Page 43032, line 17, change "in that" to "and that."

Page 43044, line 21, change "States of" to "states of."

Page 43045, line 21, change "the subject" to "a
44058 subject."

Page 43046, line 18, delete "Where" at beginning of sentence. Line 19, change "sort" to "sorts." Line 21, change "raising" to "reducing."

Page 43057, line 6, delete word "or" between words "demand" and "for."

Page 43060, line 13, change "higher" to "marked."

Page 43061, line 4, change "the function" to "a function."

Page 43063, line 18, insert "if" between the words "and you."

Page 43066, line 2, change "and when a" to "between a" at end of line. Line 3, change "." to "," after word "production"; change "But" to "but" and delete word "we," making this part of line read "production, but". Line 4, change first word "know" to "no," and "every" to "very." Line 13, insert "it" between words "upon" and "whether." Line 19, insert "no" between words "of" and "great."

Page 43067, line 23, change "the price" to "their price."

Page 43068, line 3, should read: "head cost, that is a significance of overhead costs, I think". Line 16, insert word "these" between "Yes, costs." Line 19, change "economists" to "economist."

Page 43070, line 13, delete "these" between words
44059 "get" and "low." Line 17, change "and increase" to "an increase."

Page 43075, line 25, should read: "A great deal of competitive advertising".

Page 43083, line 24, change "their respective" to "the respective."

Page 43088, line 4, change "phenomena" to "phenomenon."

Page 43091, line 4, insert "—" between the words "have" and "any:" Line 5, insert "—" after the word "manufacture."

Page 43103, line 15, change "should action" to "such action."

Page 43108, line 7, should read: "complain about other dealers similarly situated who also desired to make". Or change "and" to "when."

Page 43125, line 3, add word "in" between words "fact" and "some."

Page 43138, line 21, delete word "and" between words "it" and "you."

Page 43154, line 11, insert "I" between "definition, could."

Page 43163, line 19, insert "at" between the words "be" and "an."

Page 43164, line 19, change "divided line" to "dividing line."

Page 43165, line 5, change "back" to "fact."

44060 Page 43179, line 4, change "," to "." or "—" at end of line.

Page 43181, line 11, change "homogenuity" to "homogeneity."

Page 43192, line 5, should read: "down that concept of cross-hauling to what seems to me to be". Line 9, should read: "ideal. I consider that this is, however, one of the out—".

Page 43196, line 4, insert the word "it" between the words "that" and "it." Line 15, change "competition" to "competitive" and delete ",".

Page 43197, line 5, change "breathe" to "breed." Line 7, change "contribute" to "contributes." Line 20, insert "this" between the words "by" and "industry."

Page 43202, line 2, delete "the" between the words "possible" and "lower."

Page 43203, line 17, delete ",—" at the end of line. Line 18, delete "," after the word "why."

Page 43214, line 23, insert the word "or" at end of line.

Page 43215, line 2, change "fully" to "poorly." Line 10, insert the word "poorly" at end of line.

Page 43216, line 13, change "possibility" to "possibly."

Page 43217, line 5, "The decision" should read 44061 "If the decision." Line 8, add the word "it" between "reasons, seems."

Page 43219, line 6, delete the word "that" at beginning of line.

Page 43227, line 16, change "It could be" to "It is."

Page 43229, line 11, change "another" to "never" and delete ",". Line 21, change "implicating" to "naming," (involving).

Page 43231, line 22, should read: "meant. If it does mean: Is the existence of such a method". Line 23, change "," to "?" after the word "demand."

Page 43237, line 3, insert "a" between the words "be" and "balancing."

Page 43240, line 14, change "determine" to "determined."

Page 43250, line 3, change "current" to "a report on the". Line 4, insert "or" (on) between the words "other" and "price"; change "base" to "bases."

Page 43257, line 13, should read: "I referred to before, and I remember some of the same individuals".

Page 43283, line 11, insert "if" after the word "Well,". Line 12, change the word "correct" to "incorrect."

Page 43286, line 13, insert the word "when" after the word "No,".

Page 43295, line 2, insert the word "always" after the 44062 the words "We do not."

Page 43297, line 6, delete the word "who" after the words "the economists."

Page 43298, line 11, change the word "It" to "They."

Page 43304, line 3, change the words "my exception" to "imperfection." Line 20, change the word "in" before the word "prices" to "its." Line 22, change the word "policy" to "possibility."

Page 43305, line 12, change the words "In so far as" to "to avoid." Line 20, insert the words "it is" after the words "implies that."

Page 43307, line 10, change the word "got" to "have."

Page 43310, line 12, change the word "competition" to "situation."

Page 43314, line 10, delete the words "number of." Line 22, change the word "they" to "there."

Page 43315, line 16, insert the words "such a" after the words "there would be."

Page 43316, line 24, change the word "time" to "timeless."

Page 43316, line 25, change the word "imperfect" to "perfect."

Page 43317, line 2, change the word "same" to "more." Line 12, change the word "invariables" to "variables."

Page 43326, line 7, change the word "as" to "to be."

Page 43327, line 2, change the word "has" to "does."

44063 Page 43328, line 16, insert the words "I am not" before the words "an economic historian."

Page 43328, line 25, change "substitute" to "substantiate."

Page 43331, line 6, change the word "I" to "we." Line 9, change the word "ideals" to "ideas."

Page 43332, line 3, change the word "plan" to "plant."

Page 43342, line 17, insert the word "decisions" after "individual."

Page 43349, line 4, insert the word "in" before the words "that a degree." Line 5, change the word "the" to "a" before the words "matter of permission." Line 6, change "the" to "a" before the words "matter of the nature." Line 11, delete the ";" and insert the word "that" after the word "manufacturers."

Page 43361, line 11, delete the words "there are."

Page 43374, line 4, insert the word "so" at the end of the line.

Page 43375, line 17, change the words "an equilibrium of" to read "in equilibrium in."

Page 43389, line 9, change the words "and towards" to "as applied to." Line 22, change the second word in that line, which is "as" to "that."

Page 43401, line 12, change the word "of" to "or."

Page 43405, line 14, insert the words "Because
44064 of" before the words "all of those things." Line
15, delete the word "from."

Page 43410, line 15, change the word "plant" to "buyer."

Page 43411, line 2, change "a" to "the" before "country."

Page 43419, line 7, change the word "have" to "had."

Page 43423, line 25, delete the word "perhaps."

Page 43433, line 23, strike the word "in" before the words "the common method."

Page 43443, line 14, change the line to read as follows: "One aspect of this he likes and one aspect of it he does not like."

Page 43444, line 4, insert the word "it" before the word "that" and insert "way" after the word "that."

Page 43447, line 7, insert the word "not" after the words "I think one could."

Page 43448, line 9, delete the word "under." Line 25, change the words "some base" to "non-base."

Page 43453, line 13, change "any" to "if my."

Page 43456, line 12, change the word "or" to "whether."

Page 43457, line 6, change the words "not a base" to "non-base."

Page 43459, line 15, insert the words "this is" for
44065 the word "and." Line 16, change the word "phenomena" to "Phenomenon" and the word "applied" to "implied." Line 17, insert a comma after the words "of any sort."

Page 43461, line 17, change the words "argue again to" to "are again in." Line 21, strike the word "and" and insert a period at the end of that line. Line 22, change "that" to "That" and change the word "that" appearing before "is quite possible" to "it."

Page 43461, line 23, strike the word "an" before the words "imperfect competition."

Page 43464, line 9, change the word "mill" to "market."

Page 43465, line 7, insert the word "a" at the end of that line.

Page 43468, line 7, insert the word "is" before the words "very common."

Page 43469, line 9, should read as follows: "terms coming to be uniform throughout a trade. Now, again, do I".

Page 43479, line 25, delete the word "but" and begin a new sentence with the words "It is."

Page 43480, line 12, change the word "the" to "a." Line 18, change the words "essential to" to "the sense of."

Page 43484, line 12, change the word "posing" to "opposing."

Page 43485, line 4, delete the word "on" and the
44066 comma preceding "on." Line 5, delete the word "the."

Page 43492, line 24, insert the word "always" before the words "tied up."

Page 43494, line 13, insert the word "what" before the words "is it."

Page 43497, line 13, insert the word "to" after the word "presumably." Line 14, insert the word "then" before the words "that local mill."

Page 43500, line 19, change the word "a" to "the." Line 22, insert the word "on" after the word "questions."

Page 43501, line 1, change the words "possibly can't" to "can't possibly."

Page 43506, line 4, change the phrase "that had these products" to read "that had these characteristics."

Page 43508, line 16, change the word "point" to "plant." Line 17, change "of" to "or."

Page 43510, line 6, delete the word "that."

Page 43512, line 21, change the word "other" to the words "others of the."

Page 43513, line 15, change the word "fussy" to "fuzzy."

Page 43515, line 4, change "advantage" to "advantages." Line 24, change the; "and" to, "that." Line 25, insert the word "and" for the words "there is."

Page 43516, line 8, substitute the word "them" for
44067 the word "under." Line 9, delete the comma after the words "economic system." Line 18, substitute the words "because of a" for the word "by."

Page 43518, line 12, change the word "completely" to "properly."

Page 43519, line 13, substitute the word "time" for the words "and while." Line 15, end the sentence with the words "and location" and capitalize the next word, which is "If."

Page 43525, line 11, delete the words "The—perhaps." Line 23, insert the word "uniform" before the words "delivered prices."

Page 43526, line 17, change the word "was" to "is."

Page 43532, line 11, delete the comma after the words "you conceive that."

Page 43539, line 7, substitute the word "that" for the word "there."

Page 43540, line 1, strike the word "there." Line 4 insert the word "and" before "therefore."

Page 43542, line 13, should be changed to read as follows: "would want to maintain an unchanging price and would because being a monopolist". Line 14, delete the word "would."

Page 43550, line 15, delete the word "entire."

Page 43555, line 5, substitute the word "one" for "you."

44068 Page 43557, line 25, change the word "phenomena" to "phenomenon."

Page 43559, line 25, change the words "there are" to "that is very."

Page 43560, line 1, delete the word "main" before the word "common" and insert the word "at" before the word "one percentage."

Page 43566, line 23, substitute for the words "in the effect of" the words "the effect in."

Page 43567, line 3, substitute the words "that in" for the word "any."

Page 43568, line 7, substitute the word "and" for the word "of."

Page 43569, line 15, should read as follows: "demand for the ingredients. The thing that had happened might be".

Page 43583, line 16, change the word "it" to "me".

Page 43585, line 11, change the period at the end of that line to a question mark.

Page 43587, line 21, change the word "ask" to "answer."

Page 43589, line 24, change "the" to "that." Line 25, change the word "situation" to "system."

Page 43596, line 23, strike the word "more."

Page 43597, line 12, substitute the words "if we" for the word "to." Line 15, insert the word "it" after
44069 the words "by another mill."

Page 43606, line 21, change the word "meet" to "mean."

Page 43624, line 9, change the word "I" to "It."

Page 43626, line 17, change the word "that" to "what."

Page 43629, line 2, change the word "deciding" to "dividing."

Page 43634, line 5, change the word "to" to "and" and delete the words "on the part." Line 7, should be changed to read as follows: "markets before, and that these together create the necessity of".

Page 43636, line 23, change the words "or a" to "that."

Page 43638, lines 7 and 8, the words "which is to all matter of degree of monopolist," should be deleted.

Page 43639, line 21, insert the word "in" before the words "some countries."

Page 43640, line 11, insert the word "it" before the words "would be."

Page 43641, lines 2 and 3, delete the following: "a—you would obviously have".

Page 43642, line 18, insert the word "of" before the word "forces."

Page 43650, line 4, insert the word "which" after the word "industry."

14070 Page 43653, line 23, substitute the word "could" for the word "would."

Page 43660, line 1, insert the words "difference but there would be a" before the word "strong." Line 12, insert the word "or" before the words "Send me 10 pounds." Line 24, delete the word "perhaps."

Page 43662, line 19, insert the word "not" before the word "distinguishing."

Page 43663, line 23, substitute the word "a" for "the."

Page 43664, line 7, delete the period after the word "use" and insert the word "but."

Page 43046, line 1, substitute the word "sellers" for the word "buyers."

By Mr. Bond:

Q. Professor, when you testified in answer to Mr. Wooden's questions as to the books and articles that
14071 you had read on this general subject, did you mean to imply that those that you named were all that you had read?

A. No. I was recalling just at the moment the ones that I could bring back to mind. I am sure there were others, and I have recalled others since that time.

Q. Is the literature on basing points extensive or meagre?

A. I should say the scientific literature on basing points is rather meagre.

Q. In your opinion, have you read all of the books and articles on this subject that were of any importance?

A. I have read, I believe, all of the articles that appeared in scientific journals and any articles that I regarded of importance.

Q. Now, on page 43246 you answered a question of Mr. Wooden which involved the phrases "economic evo-
44072 lution" and "economic development."

Will you tell us what you mean by those terms?

A. Well, I mean by that and in that connection the, one might call, natural and economic development of industry growing out of normal business motives, and I was excluding the collusion or agreements, as opposed—a naturally developing method—as opposed to a contrived or consciously decided upon method.

Q. Now, with reference to your testimony on the subject of price competition, let me ask you, if the price of two sellers as quoted is identical, and if the services which they are offered are also identical, would you say that there was no price competition between them?

A. No. I have indicated, I think, that price competition consists in competitive pressure upon competitors, and that exists in the case of a person who is charging the same prices and giving the same services but who is free at any time to meet any change or to initiate a change if he wishes to do so. It is not necessary for my concept of price competition that he should actually at any moment be changing, nor that there should be differences between the different sellers.

Q. Now, in several of the hypothetical questions which I put to you there was a stated assumption that cement was a homogeneous product. In those instances in what sense were you using the word "homogeneous"?

A. Generally, throughout the testimony I was using the term—

44072 Could I have the question read, please?

Trial Examiner Norwood: Read it.

(Question read.)

A. I was taking the word to mean, "homogeneous," in the physical sense. At times I spoke of a homogeneous product at a certain place, and that brought in the concept—

the additional concept of the place as well as the thing. But, generally, I took the word "homogeneous" to refer to the physical characteristics of the product.

By Mr. Bond:

Q. As they appeared to the seller or to the buyer?

A. As they appeared to the buyer of the product.

Q. And you say that in one or two instances you used the word in the more restricted sense of including what you call place utility?

A. Yes. I recall one place in which I was discussing the possibility of a central market, and in that place I pointed out that the article was not truly homogeneous, because the different sellers would be offering this product as of different places, and, therefore, from the point of view of the buyer, they would not be—the article would not be truly homogeneous.

Q. And in all other cases would you say that where you failed to mention the matter of location you were using the word "homogeneous" in the broader sense that you first indicated?

44074 A. I think so, to the best of my recollection.

Q. Taking the industry on the basis of the assumptions in the long hypothetical question, can a non-base mill, in your opinion, exclude a distant mill from the immediate market surrounding the non-base mill by simply changing its status to the status of a base mill?

A. No, it cannot exclude in the sense of absolutely exclude competitors from its market, merely by becoming a base mill and lowering the—making a base price lower than the mill price that it had been receiving. Under its previous status it could discourage invasion of that market, but it would be virtually impossible for it to exclude any sellers.

Q. Now—

Trial Examiner Norwood: In practice, if he makes the price low enough, he will keep the other fellow out, will he not?

The Witness: I cannot testify as to the facts in the—

Trial Examiner Norwood: So low that the other man could not go in there?

The Witness: I could not testify as to the facts in the cement industry.

Trial Examiner Norwood: But there is the economic possibility of his doing it?

The Witness: Well, it is economically conceivable that he can do it. But I must add to that, that implies 44075 that the mill is going to lower its own mill—or establish a mill base which is so low that no seller would be willing to sell even part of his product on the basis of out-of-pocket costs at that price, and that would mean making that base price so low that I would suppose that it would be highly unprofitable and, quite possibly ruinous to a mill that attempted to do that.

By Mr. Bond:

Q. Now, at several points in your testimony where you were referring to the amount received by a mill after the deduction of freight you used the term "price." Did you intend at those points to say "price," or did you intend to use the phrase "mill net"?

A. I fear that at a number of points I slipped into the terminology that is sometimes used of referring to that as price. Strictly speaking, I should have said, and I think my testimony on the whole will indicate, in my opinion, that that should be called net—mill net, or net return.

Q. Do you or do you not consider that the mill net in this industry is price?

A. No, sir.

Q. My question was, do you or do you not?

A. I do not.

Q. On page 43588 you spoke of "points of conflicting self-interest." Did you mean that you knew of such 44076 conflicts as exist in this industry, or did you infer that they would or might be present?

A. Well, I would infer it from the statement of facts—from the assumptions. When two sellers are trying to sell to the same buyers, then obviously there is a point of conflicting self-interest. That is commonplace, and I was assuming it from the facts as stated.

Q. On page 43670 you testified to the effect that wherever a base mill sells at different points you necessarily have different mill nets. Did you intend to so testify?

A. No. That is obviously not in accord with my concept, which I think was expressed at various places—various other places in the testimony. The base mill is not selling at different mill nets within the territory in which it is the effective base mill. I would be referring in that case to sales that were made on a freight absorbing basis

in the territories where the price was determined by some other mill's base plus freight.

Q. Now, Mr. Wooden, on page 43708, asked you about a closed market. Can you give us an example of what you consider a closed market?

A. Well, I think the produce exchange or the stock exchange might be considered a closed market.

Q. Now, on page 43724 you stated in substantate that it was difficult for you to conceive of an absolutely
44077 rigid place for four or five years on the stock exchange. Will you explain in what respects such rigidity of price on the stock exchange is different or would be different from rigidity of price in a commodity such as cement?

A. Well, the conditions of the two markets are quite different. For one thing, there is a large number of sellers on a stock exchange. One of the requirements, I believe, for the listing of the security is that there shall be—that the security shall be widely held. So the large number of sellers gives you that one condition, at any rate, which approaches the condition of the perfect market. That is quite different than you find in the case of a manufacturing industry such as cement.

Q. Now, showing you the testimony on page 43729, where just before adjournment on Friday noon the question was asked you, do you wish to comment on your final answer on that page?

A. Yes. I welcome the opportunity to comment on that. I recall the instance very well, that the session was just breaking up; the Judge, I think, was leaving the bench at the moment; and I did not give a complete answer, or answer to completely express my view.

As it stands it appears that I have said that inflated capitalization increases capital costs, or has a tendency to increase capital costs. I think that might be drawn from that answer.

44078 The answers immediately after lunch, I think, cleared it up. That does not express my view. And I think that was indicated when we followed the question up a little further, and also there were some answers preceding that, which, if the whole series of questions was read, would indicate that that simple "yes" I gave was quite inconsistent with what I had just said before.

Q. Now, referring to your testimony on page 43741, and

following pages, with reference to the matter of inelasticity and its relation to demand, let me ask you, does inelasticity imply a small demand for a product?

A. No, sir.

Q. Does elasticity mean that there is a large demand for the product?

A. No, sir.

Q. Is there any relation between the fact that there is elasticity or inelasticity in the actual amount of the demand?

A. Oh, obviously not.

Q. On page 43750 and 751 Mr. Wooden asked you in substance whether a diversion of a shipment by a buyer would not constitute discrimination by the manufacturer. Let me ask you, if the manufacturer made no attempt to prevent such diversion, would you consider that the manufacturer would then be responsible for any resulting discrimination?

A. Well, I would regard—I would consider that 44079 he would be. As to the fixing of legal responsibility, I would not want to express an opinion, but it would seem to me quite clear that if that practice were going on, and he was in a position to stop it, and he did not stop it, that he would be responsible for its continuing.

Q. From your standpoint as an economist?

A. Yes.

Q. On page 43756 reference was made to a case where one manufacturer announced an increase of price and his competitors did not follow and adopt the proposed increase. This was referred to as market leadership. Would you call such an instance of one mill proposing an advance in five days, where none of the other competitors followed such an advance, would you call that market leadership?

A. Well, strictly speaking, leadership implies followership, so to speak. That is, you can't conceive of a leader without there being people who are following; and if somebody makes a move and nobody follows him, I do not see logically how you can call that first one a leader.

Q. Now, referring to your testimony on page 43566 as to elasticity of demand, certain questions of the Examiner, let me ask you, is there any relation between elasticity of demand and its marginal uses, the marginal uses of the product?

A. Yes, certainly, and with the—I think that answers your question.

44080 Q. Would you like to see the testimony?

A. Yes, if I could see it, please.

(Mr. Bond hands testimony to the witness.)

The Witness: Well, I recall the incident very well.

Mr. Bond: Would Your Honor like to see it?

(The witness hands the testimony to the Trial Examiner.)

Mr. Bond: It is a question Your Honor asked.

The Witness: In the middle of the page.

Either I misunderstood the question put by His Honor or there was a slip of the tongue, because very definitely I would agree that the greater—that when there is—that the number of different uses which a product has does have a bearing on its elasticity. I have taught that in my courses of economics for so many years that I do not see how I slipped—to make a statement that I did not intend.

By Mr. Bond:

Q. On page 43649, the last question on the page starts with a question by Mr. Wooden: "Haven't you testified," and then he attempts to summarize your previous testimony, after which he puts another question to you which you proceeded to answer, and you did not comment on his summary of your testimony. Did you mean to imply that you had testified in substance as he claims you have?

A. That was a case in which I was centering at-
44081 tention upon the question that was asked, or, rather, the latter question that was asked, and failed to say that I did not assent to an interpretation of my testimony given by Mr. Wooden in the first part of that question.

Mr. Bond: The phrase in question on which the witness has been commenting reads as follows: "But haven't you testified that under the uniform mill base plan a manufacturer would have to reduce his price if he wanted to keep others out of his market area?"

By Mr. Bond:

Q. And you say you did not intend to assent to the statement?

A. No, I did not intend to assent to that. I was centering my attention on answering the question which immediately followed.

Q. Now, Professor, assume that in a State in which a number of mills engaged in selling cement one of the mills announces a uniform delivered price at all points through-

out the entire State, or substantially the entire State, which delivered price is lower than the delivered prices previously quoted. Is such an act, in your opinion, consistent with effective competition?

The Witness: Would you read that, please?

Trial Examiner Norwood: Read it.

(Question read.)

Mr. Wooden: I object to the question, Your Honor, as being based on assumptions that are not borne out
44082 by the record.

Mr. Bond: I remember Mr. Wooden telling us earlier in cross-examination that he had a right on cross-examination to put questions on other assumptions. Their value must depend on whether they do conform.

Trial Examiner Norwood: Is this an assumption which the Counsel made on cross-examination?

Mr. Bond: It relates to a subject which he opened up on cross and which was not touched upon on direct. I say that this does conform to the record.

44083 Trial Examiner Norwood: Well, I will overrule the objection. He may answer.

By Mr. Bond:

Q. Do you have the question in mind?

44084 Trial Examiner Norwood: Answer the question. Does that indicate competition to you?

The Witness: Just how was the question, the latter part of the question?

(Question read.)

A. Yes.

By Mr. Bond:

Q. Now, assume that shortly thereafter other mills selling in this State also adopted this uniform price, does the following of this uniform price by these competitors, in your opinion, justify an inference of collusion?

A. No.

44087 ROLAND S. VAILE, being called as a witness for Respondents, and being first duly sworn, testified as follows:

Direct Examination By Mr. Leisure.

I am Professor of Economics and Marketing at
44088 the University of Minnesota. I have been so occupied for a period of seventeen years. I received my Master of Arts degree from Harvard University in 1922. I have written several books in the general field of economics and marketing, and a number of longer and shorter articles and monographs. From 1914 to 1923 I was assistant professor of Orchard Management at the University of California. I am a member of the American Economic Association, the American Statistical Association, the American Marketing Association; one or two others, but I do not recall at the moment. I have been directly and officially dealing with marketing problems
44089 ever since I joined the staff of the University of California in 1914. I have included the basing point method of selling both in my studying and in my teaching. I have had occasion to familiarize myself with the published articles and other works on the basing point method of marketing.

Mr. Leisure: I tender the witness as a qualified expert economic witness.

Mr. Wooden: I think his qualifications may be acceded to, Your Honor.

By Mr. Leisure:

Q. Professor Vaile, I would like to ask you a question, which I will describe as the long hypothetical question. Whenever reference to it is hereafter made I will ask you to answer with reference to the assumptions that I shall not state.

Let us assume that the following description is a statement of the conditions in the cement industry of the present day:

Cement is a homogeneous commodity. There are approximately 150 cement mills, scattered throughout the United States, owned by more than 50 separate inde-

pendent companies. Cement mills usually have large capacities with large capital investments. The capacity of most mills exceeds the local demand. Freight is a substantial part of the cost of cement delivered to the point of use or resale. The volume of the demand for
44090. cement varies in each locality from year to year and month to month. Sometimes there is a large demand in a given market and at other times there is a small demand in that market. The manufacturers of cement which market their product in any given territory are engaged in a struggle for tonnage.

There are a very large number of buyers, and they are scattered throughout the country. At any point of substantial cement consumption there are several buyers. Buyers of cement (including dealers, contractors, and others purchasers) are well informed with respect to the prices charged and the methods of sale employed by competing manufacturers. Buyers purchase on the basis of the lowest cost at the point of use or resale. For more that twenty years buyers have refused to pay any more for for one brand of domestic cement than another. For more than twenty years cement has usually been quoted and sold at destination prices. Buyers of cement normally request prices f. o. b. destination. From time to time some manufacturers have, upon request, made sales to customers f. o. b. mill.

In quoting prices a manufacturer usually takes into consideration the prices which have been quoted by his competitors for delivery at the destinations in question. At any destination the openly quoted delivered price appears to reflect some pattern. The most prevalent of these patterns is the lowest combination of some price base plus actual freight from the basing point. Another pat-
44091. tern appears to exist when the same price is quoted at a number of adjacent destinations (such prices having sometimes been called in this case flat or zone prices). A third pattern appears to exist when prices radiate from some market area (such prices having been sometimes called in this case arbitrary prices and have been made around some ports to meet the competition of foreign cement, and at other places to meet other competitive conditions). Flat, zone, and arbitrary prices do not reflect the variations in actual freight charges.

Fifty or more mills are basing-point mills and about 60 percent of the productive capacity of all mills is located either at or within a few miles of basing-point mills. These basing-point mills are scattered throughout the country. Each manufacturer can at any time make its mill or plant a basing-point mill. At different times the same mill has been a base mill and a non-base mill. The total number of base mills has varied from time to time. All manufacturers, including those with basing-point mills, shrink their mill nets in making sales at distant points.

Whenever a lower price is openly quoted by one manufacturer, other manufacturers selling at that destination have found it necessary either to reduce their delivered price to meet this lower price or to withdraw from actively soliciting business at that point. It has been the experience of each manufacturer that an open re-44692 duction in prices is met immediately by competitors, and that a quoted reduction in prices does not bring a compensating increase in the cement consumed where the decrease is effective nor a compensating increase in the sales of the manufacturer initiating the decline. Each manufacturer has invested considerable time and money in developing channels of distribution, such as dealers and contractors. A mere reduction in price does not ordinarily drive a manufacturer out of a consuming area where it has developed customer good-will. It has been the experience of each manufacturer that an open reduction in price has, from time to time, provoked further reductions in price by competitors. Such open price reductions have sometimes resulted in price wars.

For more than twenty years most manufacturers have regularly broadcast their prices to the dealer trade. In quoting decreases in price a manufacturer usually makes it effective at once and buyers are usually reimbursed for shipments made just prior to the decline. In quoting increases in price a manufacturer usually makes it effective in several days after the announcement is received by the trade. In the event of an increase no sales are made at the higher prices unless all competing companies announce that they are following the increase, and no such sales are made until the quotations of all the companies competing in a given market have become effective. Any manufacturer,

no matter how small, can initiate an effective decrease in price.

44093 For more than twenty years dealers and contractors have been protected on specific job contracts in the event of an increase in price, and have been given the benefit of the new low price in the event of any decline in price. Upon an increase in price dealers and contractors are protected on spot shipments by having an opportunity to buy any quantity of cement for which they will take shipment within 15 days after the increase has become effective in that market. Various manufacturers have found that they do not sell a substantial quantity of cement at their increased price even if their competitors followed the increase until several months after the increase became effective.

Some manufacturers have quite consistently adhered to their publicly quoted prices and other manufacturers have made sales at reductions from their publicly quoted prices, such sales being intended to be secret prices. Other manufacturers have made sales reflecting special terms or concessions not contained in their open price announcements. The announcements to the trade of these manufacturers which made secret prices or concessions quote a price not below the lowest openly quoted price of any competitors. These secret price cuts often become known to competitors. There have usually been some secret prices, concessions or variations in terms being made by various cement companies. The volume and amount of such secret prices have tended to increase when the demand for cement
44094 was small.

Customers often give manufacturers an opportunity to meet the lowest price available to them whether it is publicly or secretly quoted. Manufacturers have observed that if a special price is quoted to one customer, other customers upon learning of this fact demand similar concessions. When competitors learn of such price concessions they frequently meet such lower prices either by granting similar concessions at the same or other destinations, or by openly announcing a general price reduction which affects a large consuming area. Manufacturers have been shown from past experience that extensive secret price concessions in many markets may result in open price wars.

There have been price wars in the cement industry. In the event of price war prices have been reduced to a level approximating the out-of-pocket costs of production. Price wars continue until some manufacturer takes the initiative in raising prices and his lead is followed by his competitors. The quoted price at any given destination does from time to time remain stable for long intervals except to the extent of changes in freight rates. In some markets there have been periods of time up to three or four years where the lowest quoted price has not changed, except to the extent of changes in freight rates.

Diversions in transit are usually not permitted by 44095 manufacturers, and they try to discourage and prevent diversions. Many manufacturers in widely scattered parts of the United States do not permit dealers to come to their mills and take delivery by truck. Some manufacturers allow dealers to come to the mill and take delivery by truck. Such sales the frequently made at the same price as though the cement had been delivered to the dealer's warehouse.

Now, Professor, will you please state whether or not in your opinion as an economist the marketing practices as described could logically be the result of an economic development in such an industry?

44097 By Mr. Leisure:

Q. Dr. Vaile, I have passed around typewritten copies of this question. Will you just give us your answer now?

A. As a matter of personal privilege, Mr. Examiner, I wonder if the record may show that it is a misnomer to call me "Doctor," and I trust that in being addressed that will be kept in mind.

Trial Examiner Norwood: Well, is it "Professor"?

The Witness: "Professor" or "Mister."

A. A long set of assumptions were read to me before lunch, and a short question following those assumptions. I wonder if I may have the question re-read.

Trial Examiner Norwood: Do you wish all the conditions?

The Witness: No, not the assumptions, just the 44098 question part.

By Mr. Leisure:

Q. The question was asked you, Professor, if you would please state whether or not in your opinion as an economist the marketing practices as described could logically be the result of an economic development in such an industry?

A. I believe that the conditions described could logically have been the result of economic development in the industry.

Q. Now, under the same assumptions, Professor Vaile, will you state whether or not in your opinion you consider that the marketing practices as described preclude the existence of free competition?

A. I do not believe that the conditions described in the assumptions preclude the existence of free competition.

Q. Now, I used in my question and you have used in your answer the words "free competition." Will you please define that?

A. Well, I suppose that there will be minor differences in the definition of that term among any group of people. Some might say that free competition cannot exist except in a state of complete anarchy. I would not take that extreme position. I would say that for free competition it is necessary that individuals are free to act in their own best—in what they believe to be their own best interests under a reasonable set of governmental rules and regulations understood by all.

44099 Q. Will you state, Professor, whether or not the marketing practices as described indicate to you, as an economist, that they were arrived at by collusion or conspiracy?

A. There is no evidence in the assumptions placed before me that suggest to me as an economist that they were arrived at by collusion or conspiracy.

Q. I would like to ask you another question, Professor: Will you assume that the manufacture of Portland cement in the United States commenced in the latter part of the Nineteenth Century. Around 1870 several mills were built in the Lehigh Valley in the northeastern part of Pennsylvania where there was a deposit of a so-called cement rock. Until about 40 years ago most Portland cement used in the United States was imported from Europe, and moved into the interior from the Atlantic seaboard. Most of this imported cement was sold to dis-

tributors f.o.b. dock. The distributor shipped the cement to the point of use, where he resold the cement to the ultimate consumer at a delivered price. At that time foreign-produced cement was considered by most purchasers to be superior to domestic cement.

For a time it was commonly believed that the Lehigh Valley was the only locality in the United States where high quality cement could be made. After some years it was discovered that a satisfactory Portland cement could be manufactured elsewhere by blending various
44100 materials. Thereafter mills were built in various parts of the country, so that today there are approximately 150 mills scattered throughout the United States. Originally, some brands of Portland cement sold at a premium over other brands, but all domestic Portland cements have for over 25 years exceeded the published minimum standard specifications and for over 20 years customers have refused to pay more for one brand than another. In the early days the Lehigh Valley mills shipped cement all over the United States. At first domestic Portland cement was sold usually f.o.b. mill to cement distributors, who resold to cement dealers and consumers at a price f.o.b. point of use; freight has always been a substantial part of the delivered cost. Some of the new western mills sold direct to dealers, and consumers, and when dealers were sold at or about the same prices as distributors the latter gradually died out and have not generally existed for the past 25 years. The competition by these new mills was continued, and prices were reduced by the Lehigh Valley mills. The older manufacturers slowly eliminated their distributors and made their sales direct and they took over the marketing practices, as well as the functions of the distributors. With the elimination of the distributor, there were three major factors leading to the selling at delivered prices, and that these were (1) the manufacturer stepped into the shoes of the distributor who had been selling at delivered prices,
(2) dealers requested delivered prices or informa-
44101 tion so they could compare delivered costs, and (3) the necessity of meeting competition of newer mills. Dealer customers, being used to delivered prices from distributors, requested either delivered prices or information as to the amount of freight charges. Cement continued to be sold in some instances f.o.b. mill with the

freight costs to point of delivery in cents per barrel often set forth in the quotations made by various manufacturers and in other instances f.o.b. destination. With the inception of this practice by a few manufacturers, purchasers usually requested cement prices on a delivered basis. Gradually most manufacturers acceded to the dealers' requests. Prices on cement came usually to be quoted and sales made on a delivered price basis.

As new mills were built in the Middle West and successively in other parts of the country which were nearer freightwise to various consuming markets then the Lehigh Valley mills, these new mills found that buyers purchased cement from that company which sold at the lowest delivered cost, so that the western mills either met the competition of the older Lehigh Valley mills by quoting delivered prices which were as low as the prices quoted by the Lehigh Valley mills or quoted lower prices. Some of the Lehigh Valley mills met the lower prices of the new mills by reducing their prices at such destination points. This process was repeated in many instances until one, and later a number, of these new mills quoted
44102 delivered prices which usually represented the sum of some fixed figure at the new mill point plus freight to destination. At first some of the Lehigh Valley mills attempted to meet this new competition by using varying and different f.o.b. mill prices in quoting for sales to purchasers at destinations nearer freightwise to the new mills than to the Lehigh Valley mills. Some of the eastern mills found that the practice of varying their f.o.b. mill prices resulted in customers' complaints and loss in good will, and made it difficult to meet the competition of the delivered prices quoted by the new western mills. As a result, they met the delivered prices quoted by their Western competitors by quoting delivered prices. These prices usually reflected the sum of some base at a new mill plus freight to destination. As new mills were built throughout the country, this process was repeated as to some of the mills which made their delivered prices the sum of some base at their mill plus freight to destination, thus making their mills basing points, while some of the new mills did not make themselves basing points but quoted delivered prices to meet the prices quoted by competing mills; that such non-base mills are generally small mills or distant from large consuming markets.

About 1910 the practice of broadcasting quotations to customers and prospective customers was initiated by one manufacturer and thereafter other manufacturers
44103 also distributed printed quotations to the trade.

Cement prices generally came to be quoted on a delivered price basis. From 1900 until 1930 the volume of cement consumed in the United States steadily increased. There has been from time to time an actual shortage of available cement in various markets. New mills were built either to meet the increased demand or as promotional ventures. Mills have usually been built at the site of satisfactory raw materials. Such materials are heavy and expensive to transport for any distance. Most mills are systematically kept up to date with the newest equipment. The product has been improved in quality. Such improvements in the product have increased costs of production. Many manufacturers have gone into bankruptcy and mills have been abandoned.

Under these assumptions, Professor Vaile, will you state whether or not in your opinion you consider that the historical development, as described in these assumptions, preclude the existence of free competition?

44104 A. In my opinion they in no way preclude the existence of free competition.

By Mr. Leisure:

Q. Will you state, Professor, whether or not in your opinion as an economist the historical development described is one which you would normally find in an industry of this type?

A. By "an industry of this type" I assume you have in mind the assumptions now put before me in both these two sets of hypotheses?

Q. I do, sir.

44105 A. Under those assumptions it seems to me this is a very normal development to have expected.

Q. Now, let me ask you another rather shorter question, Professor Vaile: Assuming that cement is a homogeneous commodity and buyers will not pay more for one brand of cement than another. Buyers almost always compare the cost of the product laid down at the point of use or resale in making purchases of cement. Buyers are well informed with reference to prices quoted and market conditions. Freight is a substantial part of the laid down cost

of cement. There are approximately 150 cement mills scattered throughout the country. These mills are owned by more than 50 separate independent companies. Cement mills usually have large capacities with large capital investments. The capacity of most mills exceeds the local demand. Manufacturers have found that reductions in price do not bring a compensating increase in cement consumption.

Cement is usually sold at delivered prices. The prices quoted for cement by various manufacturers at any given destination are usually the same. Some manufacturers do from time to time make secret price concessions. The number of such concessions granted varies from time to time and such concessions usually become known to competitors. All manufacturers shrink their mill nets in making sales at distant points.

Cement is often shipped from one mill into the territory immediately adjacent to some other mill. Manufac-
44106 turers usually refuse to allow customers to take delivery of cement in customers' trucks at the mill. Manufacturers usually do not permit diversion of cement in transit.

Now, will you be good enough to state, Professor, whether or not in your opinion as an economist the marketing practices as thus described could logically be the result of economic development in such an industry?

A. In my opinion they could.

By Mr. Leisure:

Q. Well, under the same assumptions, Professor, will you please state whether or not in your opinion you consider that the marketing practices described preclude the existence of free competition?

A. I see nothing in the assumptions which would in any way preclude the existence of free competition.

Q. And will you please state for the record whether or not the marketing practices as described indicate to you as an economist that they were arrived at by collusion or conspiracy?

A. The assumptions suggest to me that these
44107 marketing practices were arrived at without collusion or conspiracy.

Mr. MacIntyre: May I have the answer read, Mr. Reporter?

(Answer read.)

By Mr. Leisure:

Q. Now, in addition to the facts assumed in the last short hypothetical question, will you be good enough to assume, Professor, the following: Assume that quoted delivered prices are usually the equivalent of the lowest combination of some price base plus rail freight to the destinations in question, what effect, if any, would that have upon your answer to the last three questions?

A. It would make no difference in my answer to the to any of the last three questions.

Q. Do you consider this historical development and the existing practices as stated in the assumptions of the long hypothetical question precludes the existence of free competition?

A. I do not.

Q. What have you to say, Professor Vaile, as to whether or not a method of marketing such as described in the assumptions in the long hypothetical question facilitates the meeting of local fluctuations of demand?

A. Well, this question, as with a good many others that I anticipate will be asked, has to have some standard of comparison, I suppose, facility as compared to some 44108 thing else. I should say that this does give facility of meeting local fluctuations in demand through the use of the so-called freight absorption that is assumed in the hypothetical—in the set of assumptions.

Mr. Wooden: Will you read that answer again?

(Answer read.)

Mr. Wooden: Not in comparison with anything now.

By Mr. Leisure:

Q. Now, on page 17755 of the record, Professor Vaile, Professor Fetter testified as follows; this is the question first:

"In your opinion, Doctor, can a basing-point system of identical delivered prices exist or be maintained as the result of competitive forces operating independently of each other?"

Dr. Fetter replied to the question:

"I think not."

Do you agree with that testimony?

A. No, I do not. As I have already testified, I think these assumptions, at least as put before me in the hypotheses, do permit competition.

Q. On the same page of the record, 17755, the following question was asked of Professor Fetter:

"In your opinion, can the basing-point system of identical delivered prices exist or be maintained as an expression of the economic law of supply and demand?"

44109 Professor Fetter answered that question:

"I think not."

Do you agree with his testimony on that?

A. No, I do not, if by the basing-point method of delivered prices you intend to ask me the method that has been described in the set of hypotheses, then I do not agree with Dr. Fetter's testimony.

Q. And in what respect—I mean, what is your reason, Professor Vaile? Would you like to have Professor Fetter's statement read again?

A. I am sorry. I would like to have that question as asked Professor Fetter re-read.

(Record read.)

A. Yes. I would be very glad to expand my answer and show my reasons for differing with Professor Fetter. It may be a difference of understanding of what we are talking about, but the Commission and the Examiner certainly are entitled to know the basis on which I have answered the question.

The law of supply and demand to me is a summary of large, more basic matters back both of demand, on the one side, and supply, on the other, convenient summary, which says approximately this, that there is a strong tendency under conditions of freedom of individual action and individuals acting in their own best interest, there is a strong tendency for supply to arise and to equate with de-

44110 mand; that is to say, to be taken off the market at a price which both clears the market; that is to say, takes the entire supply and just covers marginal costs. Now, if that is what we mean by the law of supply and demand, and that is what it means to me, it seems to me perfectly possible for this system, as described to me, of quoting prices to give expression and to permit the industry, actions of individuals and corporations, buyers and sellers, to bring about that strong tendency for equation of costs and price and a cleared market.

Q. Well, now, also on page 17755 Professor Fetter was asked the following question: "In your opinion can the basing-point system of identical delivered prices exist or

be maintained without some form of cooperation among competitors?"

His answer follows on page 17757, and following, Mr. Wooden, as follows:

"It is my conclusion as a student of basing-point practices of various industries that it is of the essence of the basing-point practice that there is cooperation tantamount to an agreement. It requires a mutuality of behavior on the part of those engaged in the system. I have already indicated in part what it is that each one does or refrains from doing. The basing-point mill refrains from reducing its price to prevent raids into its territories, permits the outsider to match the governing price there and in turn the other mill, when its territory is invaded, does not be-
44111 have like a competitor but like a conspirator."

Do you agree with that testimony?

A. No, I do not, and again I would be very glad to state my reasons.

Q. Will you please do so.

A. Points of disagreement with Professor Fetter: It seems to me the most natural thing in the world under the assumptions that have been put before me concerning the nature of this industry with a relatively small number of individual firms, with fixed geographic location of those firms, with consuming markets that are distant from, and varying distances from individual firms, it seems to me a perfectly natural thing under those circumstances once a price has been named by one strong seller in a particular consuming market for others to meet that price, and it seems to me it takes no agreement or collusion, or anything else of that nature, for the price to remain in agreement until the person who originated it decides that it is in his own best interest to change it. It may, of course, happen that someone else makes that decision, it is in his best interest to change it, but certainly I can conceive of many instances that are suggested directly by the assumptions put before me in which for considerable periods of time the price would not be changed unless the person who originally quoted the present existing price made the change, and I see nothing in the situation as described which suggests to me that the other sellers in meet-
44112 ing the price, that is named by the first one who put out a price list covering a particular product, are acting like conspirators. They are acting in their own best

interest as competitors in an attempt to get a part of the sales based on the assumption that this is a homogeneous product, and that they can get part of the sales by meeting the existing price.

Q. Now, he also, Professor Vaile, states in that answer that the basing-point mill refrains from reducing its price to prevent raids into its territories, and permits the outsider to match the governing price. What, if anything, have you to say to that?

A. Well, in the first place, reversing the order of the two parts of the statement, he permits outsiders to match a price. It seems to me there is no way by which he can prevent an outsider from matching a price quite regardless of where he puts his price.

Now, if what Professor Fetter had in mind was that the basing-point mill,—that may not be the term he used, but I say that is what he had in mind,—the basing-point mill sets a price, and then does not lower it when other mills meet that price, that it seems to me is perfectly rational action under the conditions that have been assumed as existing in this industry. Those conditions include the fact

44113 that by experience over a period of time the proprietors or managers of basing-point mills have come to realize that lowered prices are met by competitors and that further lowering the price will in all likelihood be met, and therefore it seems to me the rational thing to do, where you have a relatively small number of producers, is for them individually to decide at what price in their major market they are willing to accept business, and to go actively after business, recognizing also that it is not in their interest to put that price so low and that it will drive all other competitors out of the market.

To do the latter would be, it seems to me, to attempt to act like a monopolist, to get into a monopolistic position with respect to that particular market, and a competitor, under the circumstances that are suggested in these hypotheses, is not expected, in my feeling as an economist, is not expected to act like a monopolist.

Q. Now, does or does not the method of selling which I have described in the long hypothetical question appear to you to be one which could normally develop and continue because it was believed by each producer to be in his individual self-interest?

A. Yes, it does.

Q. Will you state whether or not in your opinion, Professor Vaile, you consider that the method of marketing outlined in the long hypothetical question is one that would encourage the development of excessive capacity in such an industry?

44114 A. No more so than any other method of quoting prices. I might expand that answer—as a matter of fact, no more so than any other method of competition. Competition in many instances encourage overcapacity. That is particularly true when it is easy to get into a business. For example, my own studies of grocery retailing in the Twin Cities, Minneapolis and St. Paul, indicate perfectly clear to me, as a student of such things, and economist, that the ease of getting into the grocery retailing business has led to a continuance, not only existence but continuance of overcapacity in that highly competitive business.

Similarly, I think we have much evidence at the present time in connection with many of our farming enterprises, again highly competitive enterprise. The ease of getting Competition in many instances encourages overcapacity, relative to the ability of the individual to sell his product to cover total costs, and that is what I mean as an economist by overcapacity.

This method as described, it seems to me to encourage or to lead naturally to overcapacity to an even lesser extent than the two illustrations I have given.

Q. Now, you mentioned basing-point selling in your last long answer. I would like to ask you with respect to that has there been any considerable development in selling by the use of delivered prices in American industry?

44115 A. That has come to be a very common method of selling in many American industries. I am not clear in my own mind at the moment as to just when the development took place, but certainly it is the common, a very common method of selling at the present time.

44116 Q. Before we go further into this subject, Professor Vaile, I would like to have your answer as to whether you would or would not say that selling with the use of basing-points is one method of delivered price selling?

A. As I understand it, yes, clearly a method of delivered price selling.

Q. What would you say are the conditions which appear to lead to the adoption of a basing-point method of quoting prices in any industry?

A. Well, there are, it seems to me, several conditions that are essential. There may be others that contribute, but there are several that are essential, in my opinion, to the natural adoption of such a method, and I mean by that term natural adoption, a distinction from a collusive agreement or a Government edict, which brought about such a system.

44117 Of course, such system, I assume, might come about either by Government edict or by collusive agreement, but the natural adoption would come first and foremost when those two requirements for competition are present; namely, individual freedom of action and action in the individual self-interest.

A. The second of the requirements or conditions which, it seems to me to be essential to the natural growth of basing-point systems, of homogeneity of product. Now,

44118 that term perhaps needs interpretation at this point. I think there could be more than one grade of product. You could have highly standardized product and still have such a system develop even though there were several grades of the product. Moreover, there could be occasional and minor departure from absolute homogeneity of the physical product and still have the system operation, but essentially that is a requirement.

Third, a relatively small number of operators, at least of producers. There may be a large number of consumers, I think, but still if this system developed there must be a relatively small number of producers.

Fourth, those producers must be geographically scattered, and scattered somewhat differently than the consumer market geographically. If they were scattered exactly as is the consumer market then we would tend to have, it seems to me, what some of us have called ubiquitous industries, that is everywhere present and regionally non-competing, but where the scatter is different, the scatter of producers and scattered consumers is different geographically, then you have a tendency towards competition between areas.

The next point, I think the number is now five, is a high cost or investment in the individual plant.

Another point that seems to me to be essential is a high fixed or overhead cost per unit relative to the variable or direct costs per unit of product.

44119 Another point is that there is—that freight must be a fairly important part of the total delivered cost. Now, that perhaps needs some expansion. Freight should not be as great a part of the delivered cost perhaps as it is in the case of common sand and gravel, because there you would have little tendency to overlapping of territories and little tendency to this type of quoting of prices, it seems to me. On the other hand, it should not be so slight a part of delivered cost that commodities can be sent anywhere in the United States or the world without serious consideration of freight as a part of the delivered cost.

Another matter which is clearly imperative, it seems to me, for the natural development of this system, is inelasticity of demand. If demand were perfectly elastic, or even quite elastic, all the supply that any producer would want to produce could be sold in his local market. All he would have to do would be to lower his price just a little bit and he would get rid of his supply right there, and obviously under those circumstances he would not absorb freight to get it into competition with other people's supply, and so on. So that condition, it seems to me, is essential to natural development of basing-point systems.

Now, on one of these items I have mentioned, taken alone, will produce the basing-point system as a natural form of quoting of prices, a natural form of rela-
44120 tionship between buyers and sellers in their market, but where the group comes in conjuncture, then it seems to me highly likely that this form of quoting prices will naturally develop.

Q. Assuming, Professor Vaile, that the capacity exceeds local demand, would that contribute in any way?

A. Well, I should suppose that that was inherent in the assumption I have made of inelastic demand, and a further assumption, which is, of course, an assumption of general knowledge of business conditions.

Q. I did not understand.

A. That demand fluctuates from time to time.

Q. Will you explain, Professor Vaile, what in your opinion are the advantages and disadvantages to the buyer of a practice of selling cement a certain mill base price plus freight within a certain market area around the mill, and of making other sales in some distant territories by the use of so-called freight absorption with a lower mill net on its sales?

A. Well, it seems to me there are really almost two questions there. First, of all, there is an advantage, it seems to me, to buyers who are able to buy on a quoted delivered price, that is an advantage of convenience. In the second place, the second portion of the question, where in certain territories as a result of freight absorption you get two sellers in a market where otherwise there would only be one, you have an advantage to the seller that he may choose between those two sellers, he may play
44121 one off against the other. He may get, even though he gets no monetary price concession per unit of physical product, he may get certain other benefits from one seller that he cannot get from the other, prompter delivery would be one, for example. I should say there might be numerous instances where he could get advantages because there were two people in the market that would be excluded to him if there were no freight absorption.

Under the conditions, remember, that have been set before me, namely, that we do not have identity of geographic area between the localized producing groups on the one hand and the localized consuming groups on the other, and I see no disadvantages to the consumer that grow immediately and directly out of this form of quoting prices.

Q. If an industry is to sell with the use of basing points, can you state what form of basing-point selling would, in your opinion as an economist, provide the most desirable method of marketing?

Mr. Wooden: Your Honor, that is objected to as calling for irrelevant opinion, and as presupposing some substitute for the present system, and we are not concerned with any substitute for the present system other than the restoration of competitive conditions if in fact competitive methods of selling have been interfered with.

44123 Trial Examiner Norwood: I think he may tell us that as relates to the basing-point system.

The objection is overruled.

A. Well, it is a little difficult to answer the question and be sure minds are meeting, but if I do not answer the question you have in mind ask another one—I am sure you will.

One of the distinctions that is made in our university discussion on different forms of basing points is between the so-called single basing-point and multiple basing-point system, and I should say that without exception, as I think

of American industries at the present time, the multiple basing-point system would be a preferable system of marketing to the single basing-point system.

Mr. Wooden: Now, that illustrates, Your Honor, just what I anticipated, that we are comparing the present system and merits or demerits of some proposed conceivable substitute.

Mr. Leisure: Let him finish. I do not think you, yourself, will object.

44124 Let him finish.

Trial Examiner Norwood: I hardly think so. Let him finish.

A. In the second place, there are certain academic discussions, at least, of a basing-point system, which is absolutely and rigidly adhered to. As contrasted to the type of basing-point system that is described in these hypotheses, where there are from time to time freight-absorbing sales, there are from time to time unannounced prices that are offered to individual buyers that are out of line with the announced prices. To me that system which permits those exceptions to a rigid system is a more desirable system than one which permitted no exceptions.

Trial Examiner Norwood: Well, these exceptions are made,—do they not constitute a departure from the system you are discussing?

The Witness: I would not say so, Your Honor. I would say that they are basically a part of the system. Now, that depends, you can define in any way you wish—as Voltaire said, "If you talk with me define your terms." We can define this in any way we want, and then discuss it in those terms. I am discussing the thing that has been set before me in these assumptions, in which the exceptions appear.

Trial Examiner Norwood: As part of the system?

44125 The Witness: As part of the system; yes, sir.

Trial Examiner Norwood: I see.

The Witness: Now, you see, Your Honor, you could have, by just a further stretch of the imagination for a moment, you could have an agreement which set up a basing-point system, and forbade any exceptions to the, shall we call it, pattern of prices that would arise by adding freight from the basing-point mill to the point of consumption, and that forbade any freight-absorbing

sales? Now, that is a conceivable system, and academically I say we discuss that sort of a system, and that seems to be much less desirable, seems to me to be much less desirable than the system described in these sets of hypotheses, set before me.

Trial Examiner Norwood: Then, you are not passing on the system that implies any effort whatsoever to suppress these secret prices, lower prices?

The Witness: That is a strong assumption, Your Honor, to have jumped to from anything I have said, any effort whatsoever.

Trial Examiner Norwood: No. I am just asking you whether you are or whether you are not passing on.

The Witness: You see, any effort whatsoever is a pretty strong term.

Trial Examiner Norwood: Well, any substantial effort.

44126 The Witness: I am discussing the system as it appears to have developed, at least as it has been described in these hypotheses, in which those things are continually, those exceptions are continually occurring, and there is no evidence put before me in the assumptions that either the Government or the industry has attempted to prevent freight absorption or occasional secret unannounced prices.

By Mr. Loisure:

Q. Do you consider, Professor, that the use of basing points in itself restricts competition as to price?

A. I do not see that it does.

Q. Do you consider that the use of basing point in itself tends to increase prices to consumers?

44127 A. Here clearly there must be a basis of comparison, increase as compared to what; and if I may, Your Honor, I will compare it to other possible things which may or may not have merit.

44128 First, if you had a Government-enforced or industry-enforced f.o.b. absolutely uniform mill net, that is one thing against which we can compare the results of the basing-point system, such as described here—

44129 A. In this comparison I should say there is a strong tendency for these things to occur; under the basing-point system the price is likely to be higher in those consuming areas immediately adjacent to the basing-

point mill, and lower in points midway or partially between two basing-point mills, than under the other situation postulated. In a second case, if we have a situation, an industry similar to the one here described in which we have an f.o.b. mill method of quoting prices, but no attempt to make those prices—no attempt on the part of Government or any other authority—to make those prices uniform to all buyers, then the prices under basing point would be lower nearer the mill than under this other
44130 hypothesis, and higher away from the mill, midway between competing mills, than under the hypotheses I have set up. Now, there would be those differences. What the net effect on consumer price would be would depend entirely—first, upon which of these two things, or some other you compare the basing point against, and, second, upon the geographic location of the consuming points with reference to the producing points.

Trial Examiner Norwood: Now, you are discussing the two points. Are they both basing mills?

The Witness: I am discussing a series of zone points midway between two basing-point mills as one thing, and the points around each of those basing-point mills is another thing.

Trial Examiner Norwood: Well, the prices would be nearer the basing mill—

The Witness: How is that?

Trial Examiner Norwood: Prices are lower near the base mill, are they not?

The Witness: The price the consumer pays?

Trial Examiner Norwood: Yes.

The Witness: Under the basing-point system?

Trial Examiner Norwood: Yes.

The Witness: No, they are not.

Trial Examiner Norwood: In the case of a base mill?

The Witness: In the case of a base mill the price
44131 that the consumer pays rises as you go away from the mill.

Trial Examiner Norwood: That is what I said.

The Witness: I am sorry, then; I misunderstood your question, sir.

Trial Examiner Norwood: Prices are lower around the mill?

The Witness: Under the basing point they are not lower than what they would be under some other system, but lower than they are farther away from the mill, yes.

44132 The Witness: Your Honor, I was testifying on the basis of the assumptions, of course.

Trial Examiner Norwood: I am going to sustain the objection to that. I think we are getting a little bit out of the field.

Mr. Wooden: I move to strike. That was my infenition at the time.

Trial Examiner Norwood: The motion is allowed.

Mr. Leisure: Well, I offer to prove that the witness would testify, if allowed to do so, in answer to that question that basing his answer on the assumptions contained in the long hypothetical question he considers that to be a reasonable method of marketing.

Trial Examiner Norwood: That is, that they are reasonable assumptions?

Mr. Leisure: No, no. That was not the question. The question was whether or not he considers that a reasonable method of marketing.

44133 By Mr. Leisure:

Q. Viewing the matter from the standpoint of an economist, Professor Vaile, will you tell us whether or not you consider that the marketing of the product by the use of basing points as described in my long hypothetical question is a rational method of marketing?

44134 Trial Examiner Norwood: Well, I think that he may tell us whether or not it is economically sound, or whether or not from the economic point of view—

By Mr. Leisure:

Q. Let me amend it to that effect, if I may, Professor Vaile. What I am trying to get at is this: I am trying to get at whether or not you consider as an economist a basically sound method—

A. Well, for an industry similar to the one described, for an industry having the characteristics that I have already set out in answer to another question, it seems to me that that method is sound in this sense, that it gives opportunity for as free play of competitive forces as any other method I can think of under the circumstances that have been described.

44135 By Mr. Leisure:

Q. Do you see anything in the continued existence of such a method of selling which requires any form of

policing or enforcement on the part of the industry as a whole to obtain such a selling method, Professor Vaile?

A. No, I do not. It seems to me it continues itself quite naturally without policing.

Q. Now, on page 17747 of the record Professor Fetter testified as follows:

"An artificial system of pricing such as the basing-point system has to be policed by the industry."

Do you agree with that statement?

A. I do not. If he had omitted one parenthetic phrase, "such as the basing-point system," and had said "an artificial system has to be policed," I should have been inclined to agree, although I might have wanted to know in what sense it is artificial. But I see nothing in this system as described in the assumptions that permits me to call it an artificial system, and I have already answered the question by saying that it seems to me natural to expect it to continue itself without policing.

Q. At page 17776 of the record this question was asked of Professor Fetter:

"If the statement were made to you that the public interest is best protected by the long established practice of meeting competition in the sale of cement, what would be your reaction as an economist to such a proposition?"

And Professor Fetter answered that as follows:

"If the long-established method means the basing-point system, I would disagree quite fully. I believe that it is not a method in accord with the public interest, nor in the long run in the interest of the industry."

Do you agree with that testimony?

A. I do not agree with that testimony, on two grounds: Professor Fetter was asked whether as an economist he believed this was in the public interest. It seems to me that an economist cannot answer that question in that form. What is in the public interest is determined by the people through their legislatures and through their legislative acts interpreted by the courts, as I understand it. An economist cannot set up, as an economist,—cannot set up objectives of public interest, and consequently, as an economist, I cannot say what is or what is not in the public interest, except there be put into the question an assumption that some particular end has been determined to be in the public interest, then I can discuss whether or not a par-

tieular method or process or act tends toward or away from that objective.

Now, I disagree with Professor Fetter's answer to the question as it is put to me, because I see no possibility for an economist as an economist to answer it at all. I
44137 disagree—or cannot accept, better, his answer, for another reason, and that is that he gives no support whatsoever to his conclusion. I cannot get hold of the way in which his mind works on the question before him.

Trial Examiner Norwood: Would you say whether or not from an economic standpoint it is to the interest of the public to commit one system of marketing as against another?

The Witness: Your Honor, let me give an illustration of my position. It may be determined to be in the public interest to have equal distribution of income. Now, you may disagree; I may disagree. But if that has been determined by the proper democratic process in this country, then it must for the moment be assumed that that is in the public interest. Unless I have some concrete item of public interest in mind, I can't answer whether a particular act is in the public interest or not.

By Mr. Leisure:

Q. Professor Vaile, if such a pricing method involving the use of basing points were once established, could it, in your opinion, be abandoned without collusive agreement?

A. It is very difficult for me to conceive of how it would come to be abandoned without either collusive agreement or force, Government action, something of that sort. It does not seem to me that as a free will act, free enterprise
44138 act, in the interest of the individual acting separately, it would come to be abandoned unless fundamental changes in the industry took place.

Q. Under what circumstances would an economist expect a non-base mill to commence quoting prices in a base mill pattern, that is, with delivered prices at many points of destination using identical mill nets?

A. This question starts out "a non-base mill"—

Q. Under what circumstances would an economist expect a non-base mill to commence quoting prices in a base mill manner?

A. Well, I would assume that it would commence doing so if it were free to act and if in the judgment of the people

who decided the affairs of that mill it was considered in the interest of the mill to do so.

Q. Now, passing to another subject matter, and by way of introduction let me ask you, Professor Vaile: Has the question of the meaning of the word "competition" in its various forms and aspects received considerable attention from economists in recent years?

A. Yes. Yes, very considerable attention.

Q. And has this or has it not resulted in a development of new economic views on the subject, or is it merely a restatement of the views of the older economists, would you say?

A. Well, it seems to me, as I have followed the literature and the discussions, and as my own thinking has de-
44139 veloped, to be a matter of increase in precision with which the term is used and qualified, rather than any basic change in the concept as used.

Q. There has been that change?

A. There has been that change, yes. I am certain of that.

Q. Has there or has there not been an increasing use of additional adjectives, would you say?

A. Yes, there has. And, there again, there not only has been an increase in the use of adjectives with the word, but an increase in the care and precision with which specific adjectives are used in connection—in modification of the word "competition." I should say, perhaps, rather than "modification" or in addition to "modification," amplification of the word "competition."

Q. What are some of the adjectives which today combined with the word "competition" give it a professional meaning?

A. Well, I have already given a definition of "free competition," as I would use it. It is the absence of restraint or compulsion or collusion.

Another word that has come to be used by many economists at least with more precision than formerly is "perfect competition."

"Pure competition" has been suggested and adopted by several economists, and I think when used by economists, even though they do not all use it, I think the general
44140 agreement as to what it means as a technical term.

"Imperfect competition" is a term that is frequently found now in the writings of various economists.

"Price competition," as opposed to its opposite, "non-price competition," occasionally occurs in the literature now and is used, I think, with some precision.

Those are the principal ones that occur to me at the moment that are of importance, it seems to me, in keeping clear what it is we are talking about when we discuss with each other whether or not competition exists.

Q. Professor Vaile, just what does an economist expect of competition to exist in free enterprise?

A. Of course, to give a complete answer to that question would take a long time, but I think I can get at the substance of it in this way, that where people are free to operate and do operate in their own best interest, and where there is adequate opportunity for communication, exchange of information, and gathering of information, where those conditions essential to a competitive situation occur, the economist believes there is a strong tendency for individuals to enter enterprises so that they can have goods which other individuals want and for which these other individuals will pay a price at least equal to the costs. Having made that decision to enter the field, others will continue to enter that field as they see the demand for the product, until the supply is so great that the price to clear 44141 the market will not more than cover costs. And in the process of competition there is constant effort on the part of the individual to get into a better position than his rivals by improving his cost relationships; that is, by lessening the costliness of the thing he is doing, and improvement at least slowly comes as a result of the presence of competition.

Now, I could put that in more technical terms and say that the economist expects under conditions of competition a strong tendency for a market situation in which marginal revenue is equal to marginal cost and marginal cost is equal to total average costs.

Trial Examiner Norwood: When profits are entirely diminished?

The Witness: I would have to ask you, Mr. Examiner, or Your Honor, what you mean by "profits"?

Trial Examiner Norwood: What you receive over and above the cost.

The Witness: Then I would simply have to go one step further and ask you what you mean by "cost."

Now, I will answer that if you permit me to define "cost."

Trial Examiner Norwood: All right, you definie it.

The Witness: By "cost" for this discussion I mean,—and I should say that economists generally mean all of the sums which are necessary to keep people in business
44142 at their present volume. That means that the thing which the business man may call "profits" is there in sufficient amount so that people will not let their plant go into disuse and disintegrate, or will not move their capital or their own abilities into other fields.

Now, in that sense profit is left in this price which competition finally arrives at, or has a strong tendency to arrive at.

Does that answer the question that you had in mind?

Trial Examiner Norwood: Now, the tendency is to reach a stage of balance?

The Witness: Well, there is a tendency to reach a stage both of equilibrium or balance. Now, that, however, can also be reached under monopoly, a tendency which, unless something changes, there will be no change in volume of production or price, but there would be there the existence of a monopoly profit. Competition tends not only to produce equilibrium but tends in addition to produce equation between costs, as I have defined "costs," and price.

By Mr. Leisure:

Q. Professor Vaile, in an industry such as the one described in the long hypothetical question does the existence of multiple basing-point method in any way tend to prevent competition from producing the results which an economist would expect?

44143 A. I cannot see that the existence of the multiple basing-point method of quoting prices as described in the long hypothesis would in any way prevent competition from accomplishing the things which the economist expects it to accomplish.

By Mr. Leisure:

Q. Now, a moment ago you used the term "pure" and "perfect" competition. Can you tell us whether or not there is any example of pure or perfect competition in the manufacturing industry today, from your viewpoint?

A. As I would use those terms, and as they are used by leading American economists today, I should say there is no example either of perfect competition or of pure competition in manufacturing industries either in the United States or anywhere else in the world.

Q. Would you say that imperfect competition is rarely or quite commonly found in industry?

A. Very commonly found in industry.

44144 Q. Now, I have used the term there "imperfect." Does the term "imperfect competition" indicate the absence of competition?

A. It does not indicate the absence of competition, nor is it a term designating degree. I think it would be difficult to give it full explanation of that answer. I am not sure whether you are interested in explanation of it, but it would be difficult to give a full explanation of the answer without setting up the essentials of perfect competition and then the essentials of pure competition and show in what way those essentials may be modified or partially or wholly absent.

Q. As I understand your present answer to the question, the term does not indicate the absence of competition?

A. No, it does not.

Q. What are the conditions, Professor Vaile, in industry that are necessary for these different kinds of competition to which you have just referred?

A. Well, perfect competition I like to liken to absolute zero as a concept which the physicist uses. It is a condition in which it is essential that there be so many buyers and so many sellers, that the operation of no one of them—the decision of no one of them has any appreciable effect on the supply or the demand or the price. I suppose one has to go into mathematics to get from that position into a position where competition can do anything by saying merely that the sum of infinitely small things is a

44145 finite thing.

Not only do we have to have that situation of numbers for perfect competition, we have to have a perfectly homogeneous product. We have to have perfect information in the hands of both buyers and sellers. We have to have perfect mobility of the factors of production, and that carries a corollary of perfect divisibility. You can't move—you can't have perfect mobility in such an industry as described here, for one reason, because you can't take one-hundredth of a plant and remove it somewhere else. Mobility and divisibility are definitely related and both are required under conditions of perfect competition.

Now, pure competition is essentially the same, except not quite so perfect, if I may put it that way. That is to say, you do not have an infinitely large number of buyers and

sellers. You have a large enough number so that the decision of one to produce or not to produce, or one buyer to buy or not to buy, has very little effect on the market, although it may have a microscopically measurable effect. You depart completely from the rigid concept of absolute mobility. That is left out of the definition of pure competition.

I think "pure competition" was first defined in literature, perhaps, by Professor Chamberlain, of Harvard—it may have been defined earlier than that, but, to the best of my recollection, he first defined it in precise
44146 terms, and that is the principal distinction, if I understand what he has written on the subject, that he makes, that mobility is—of capital as well as mobility of labor is and assumed to be in the nature of our actual industrial world.

Now, we have, of course, much less opportunity for mobility of capital in some industries than in others, and we have, therefore, a condition which impinges upon the nicety with which the equilibrium and equation adjustment take place as a result of different degrees of mobility in pure competition, but which does not impinge upon the intensity with which competition and competitive acts occur in those several industries.

Now, imperfect competition may result—must result because one or more of the conditions of perfect competition are not present. Either you have imperfect competition because of lack of mobility and lack of divisibility—and you always do have them in men's affairs, as far as I know; for that reason you have imperfect competition in many instances because of lack of homogeneity of the product—and by "product" I mean not only the physical characteristics of the product but the services that go with the product in getting it to the point where a buyer wants to use it; that is imperative to keep that in mind, it seems to me. You have different degrees of homogeneity of the product, and therefor you have imperfect competition, because products are not completely homogeneous.

44147 You have departures from perfect competition when you have numbers of producers limited relative to this infinite thing that we put into the definition of perfect competition.

So any one of those three things may interfere with the niceness with which competition brings about the results that the economists expect it to tend toward.

Moreover, of course, you have imperfections of knowledge, which, of course, prevent the forces of supply and demand, except coincidentally, from arriving at the equilibrium and equation point.

It seems to me there is one other point that I mentioned in competition that I have not commented on further, but those at least will illustrate the ways, the principal ways, in which individual business situations may be highly competitive, may be highly fraught with rivalry, may be far away from any idea of agreement or collusion, and still not bring out precisely the result which—not make quick adjustments to changes in either demand or supply that perfect competition would be expected to bring about.

Q. Now, in the case of manufacturing industry with the use of large scale factory production methods, is it possible, in your opinion, to have pure competition or perfect competition, as you defined them?

A. Well, certainly not perfect competition.

Pure competition—the approach towards purity of
44148 competition would depend upon the costliness of this large factory and the alternate uses to which it could be put as well as merely the fact that it was large. A large factory building with no equipment, no specialized equipment, might be fairly mobile, but if it has such specialized equipment it of course loses the aspect of mobility.

Q. Well, Professor Fetter, when testifying as a witness for the Federal Trade Commission, described the five conditions which he regarded as essential for a true market, in substance as follows; namely, two-sidedness of the market, meaning several buyers and several sellers; full knowledge on the part of buyers and sellers as to available quantities and prices; free access to the market, meaning that no one who has a desire to participate was excluded; capability of competition; namely, the ability to deliver goods or perform the services with the seller was offering; and, finally, freedom of competition, meaning the absence of any influence or pressure from others compelling a trader to act or refrain from acting as he might otherwise desire; and stated that when these five conditions were present you had a true market, and that he would expect a uniform price to exist in the market at any one time in the case of homogeneous products.

Which of the various types of competition would you say he was describing in this definition?

A. Well, he describes what I have called free
44149 competition, I should say, quite definitely. He also describes what I should call imperfect competition. And may I point out in what respect I would call it imperfect competition. He says "several buyers and sellers." That does not seem to me to be adequate to get a close approach to what I would call pure competition, certainly not perfect competition. He does not put in as a requirement this matter of mobility, which to me is very important in connection with perfect competition, at least, and consequently he certainly does not have that part of my definition included, so I should say that he describes free competition and imperfect competition in the criteria that he has set up.

Mr. Wooden: Just a moment.

I move to strike the answer as not responsive to the question. It was directed to Dr. Fetter's concept of a true market, and the witness' answer has been talking about whether it was free or pure competition.

44150 By Mr. Leisure:

Q. Then, Professor Vaile, can you tell us whether or not the industry as described in my long hypothetical question, in your opinion, meets the five requisites of a market listed by Professor Fetter?

A. Yes. It seems to me that all five of them are definitely in the hypothesis.

Q. And would you conclude, or would you not conclude that a state of free competition existed under the facts contained in my long hypothetical question?

A. Yes. Yes, I do.

Q. Now, Professor Fetter described in his testimony the early English fairs in which he said he found these conditions to be present which we have been discussing and which he therefore regarded as the best example of a true market.

Professor Vaile, are you familiar in a general way and can you give us a description of these early English fairs?

A. Yes.

Q. Have you had any personal experience with
44151 any market which would resemble what he has described as taking place in the early English fairs?

A. Yes. I have done some purchasing in markets which seem to me are quite similar to those he described.

In the fall, winter, and spring of 1918 and 1919 I was in Mesopotamia, Persia, and Constantinople for a period of time, in some markets there that were still quite similar to the markets as Professor Fetter and others have described them as the old English fairs.

44152 Q. Professor Vaile, as indicated by my previous question, Professor Fetter drew certain conclusions from these English fairs, and I have asked you your experience in connection with such fairs,—not necessarily English fairs, but fairs of that character. I am now 44153 going to ask you to draw your conclusion with respect to them as an economist regarding price.

A. Well, it was my observation that there were these characteristics, at least: First, price—

A. (Continuing.) Price was arrived at by higgling between individual buyers and individual sellers.

Second, the merchandise sold came from various original sources, and therefore the price at which it was sold included the remuneration of the person who brought it to the central market.

Third, certain merchandise which was offered for 44154 sale in Baghdad and unsold was later offered for sale in Teheran, Persia, which led me definitely to the conclusion that there existed freight absorption in connection with sales on the Eastern bazaars.

By Mr. Leisure:

Q. Professor Vaile, assume that certain mills in the cement industry have no base price or price base, so-called, but sell at each delivered point at the price that they find other companies quoting there, would you say that such a mill commonly called a non-base mill was not competing?

A. No. I would say it definitely is competing in each market in which it sells.

Q. In determining whether competition is present in an industry such as the cement industry would the rate of return on invested capital be significant to you as an economist?

A. Does that question ask significant as to what?

Q. Yes. I intended to start it with dealing with competition, whether competition is present in an industry.

A. Oh, would the rate of return be significant as to whether or not competition existed.

Q. Right.

A. At a single moment of time, no; the history of rate of return over a period of time, yes.

Q. How do you define that, Doctor? I just want your reasons.

A. Well, the first answer, at a moment of time, 44155 no, conditions concerning demand change, change without notice frequently and we have in an industry such as this lack of mobility of capital; the capital can't get out. Now, capital can't get in immediately, and as a result the rate of return at a moment may be abnormally low or abnormally high as a result of that change in the demand which cannot be immediately accommodated by changes in supply.

So, in an industry where mobility is absent the rate of return at the moment of time is not significant. Over the longer period, however, the rate of return which is received by the group of producers who remain in, or, to use the late Alfred Marshall's term, by the representative firm in the industry, is a rate of return which prudent men in competitive industries, with opportunities open to them to shift their own abilities elsewhere, except to get if they are going to say in a particular enterprise.

If the rate of return is above—in an individual industry is above that normal rate of return over a considerable period of time, I should say that is indication that something is preventing other people from increasing the supply. Now, that something may be a monopoly power, or an agreement among the group who are in the business, may be a single monopolist or a group, or it may be all these would have to be scrutinized factually; it may be that the risks attaching to this business are thought 44156 by others to be so high that the others stay far of the business over a considerable period of time.

That question would have to be explored further. But the first suggestion would be that this high rate of return indicates some form of control and withholding all expansion of supply. A low rate of return over a period of years would be explained, first, on the grounds that people feel that the risk here is not large. "We are safe to put our savings here."

In the second place, it would be explained on the resistance to mobility.

We have our long continuing farm problem as a result, it seems to me in considerable measure, of the latter thing.

People will not in sufficient numbers move off of developed or partially developed farms.

Q. Assuming, Professor Vaile, that in the cement industry there has been over a period of many years a steady improvement in the method of manufacturing cement on an increasingly economical basis and also a steady increase in the standards of quality which cement must possess to be sold as standard cement, would you or would you not say that those technological improvements as to manufacture and the quality of the finished product are any indication of price competition?

44158 Trial Examiner Norwood: Objection overruled. He may answer as to whether he would find in those assumed circumstances any indication of price competition.

A. Yes, I should find definite indication of price competition, on the one assumption that at least some of these improvements took place not absolutely simultaneously, but one company getting them in slightly before others as a competitive device.

44159 Washington, D. C.,
Thursday, September 19, 1940.

44160 ROLAND S. VAILE thereupon resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Leisure.

Q. Yesterday, Professor Vaile, I used the term "price competition," and before we go any further I am going to ask you to define the term "price competition" according to your understanding.

A. Well, "price competition" is competition which expresses itself either in actual change of relationship between the money price on the one hand and the bundle of goods and services offered at that price on the other hand, or if not actually in a change in that relationship, a threat of a change in the relationship; that is to say, a state
44161 of competition exists whether or not there is an actual change at a moment of time. I think that is implicit in the entire concept of competition, but price competition, involves within the scope of competition, involves

the relationship between price, on the one hand, and the commodity broadly defined, which includes the services connected with it, and the whole thing, whatever that may be, that is delivered in exchange for the price, on the other hand.

Q. Well, Professor, will you tell us whether or not you consider that the term "price competition" includes forms of competition other than those involved in quoting at different sums of money?

A. Of course, if your unit of commodity changes, that is in a sense equivalent to changing the amount of money, if the unit of the commodity changes. By way of illustration, one of the cigarette companies is at present announcing and offering a longer cigarette than it has previously been offering, and it says, "Here, we are giving you more tobacco in the cigarette for the same price. If you do not want more tobacco, we are giving you better quality anyway. If you are one of these smokers who just smokes a few puffs at the end, you now pull your smoke through a longer filament, that improves the quality, so whether you want the full puff or whether you want more smoke"—

Trial Examiner Norwood: I do not think you need 44162 to enlarge on that, Doctor. I think we have the point.

Go ahead.

A. Well, merely to conclude, Your Honor, that change of relationship is to me a matter of price competition even though the money price remains constant.

By Mr. Leisure:

Q. There has been a great deal of testimony on this question of price competition, Professor Vaile, in this case. Can you think of any other example of the offering of the same goods to sellers for the same amount of money in which you feel that there is nevertheless price competition?

A. Well, certainly many of the sales at retail, of consumer goods, by department stores or by other types of retail stores involve differences in services, some stores giving delivery, others not; some giving benefit of charge accounts, others not; some gift wrapping, others not. You have in each of those cases the same—you may have the same relationship between price and unit of a commodity, but you have these other things that are different, and those differences, to me, are illustrative of price competi-

tion without change in the price per unit of the original basic commodity.

Q. Well, I would like to pose an example to you, Professor Vaile: What would you say as to whether price competition exists between two drug stores on different corners which are offering the same brand of—well, 44163 you used the word "cigarettes," the same brand of cigarettes, shall we say, at the same price; if one store had only one clerk behind the cigar counter, and the other has several, so that customers were handled more quickly, shall we say satisfactorily, what would you say under these conditions as to whether there was price competition in such a situation?

44164 A. I should say in answer to the question that the situation described would come within my meaning of "price competition."

The only sort of competition that seems to me not to be price competition is the effort on the part of the seller to move the demand schedule to increase the quantities that will be taken at specific prices. That is what to me as an economist, and student of these things, is the distinction between "price competition" and "non-price competition."

Trial Examiner Norwood: Read that answer.

(Answer read.)

A. I might add to that, to further clarify it, because I want it perfectly clear for the Examiner and the Commission, that efforts to gain patronage as part of the existing demand schedule are price competition; efforts to shift the demand schedule are non-price competition.

44165 By Mr. Leisure:

Q. Well, Professor, do you consider that in determining whether price competition does exist it is sufficient to look at simply what the buyer pays?

A. Well, obviously, you have to look at the other side; what the seller receives.

Q. Did you mean at what the buyer receives or at what the seller receives.

A. Oh, I am sorry. If I said "seller," I meant "buyer," what the buyer receives in exchange for the price he pays.

Q. Professor Vaile, assume that the testimony has shown that at any given point where there is demand for cement the representatives of different manufacturers are each calling upon the trade individually to assure the business for their respective companies, by building up pur-

closer good will through prompt and efficient delivery, the satisfactory handling of claims for losses or shortages, and the allowance for returned bags, by assisting the dealer in making sales, by securing prices for a dealer or contractor on commodities other than cement needed for a specific job; by supplying free water or other items for use on the job; by the use of the most convenient type of package, by the use of the most convenient type of railroad cars for bulk shipments; by shipments in proprietary trucks in small lots; by calling to the purchaser's attention jobs where cement would be used; by rendering service to the
44166 purchaser in the form of engineering services, and assisting him in other ways in the handling of cement, would you say, Professor Vaile, that under such conditions price competition was present even though the amount in dollars and cents demanded by the different salesmen was identical, and all other terms of sale were identical, tell us whether or not you would view that as price competition?

A. It seems to me that the situation you described
44167 does indicate the presence of price competition.

By Mr. Leisure:

Q. Well, now, if two sellers have been offering in one market identical products at the same price, let us say $2 per unit, and if one of the sellers reduces his price to, shall we say $1.90, would you consider that this indicated the existence of price competition?

A. Yes.

Q. Now, then, let us assume that the second dealer in the instance that I have given you, finding himself unable to make any sale at the $2 price, while his competitor is offering identical goods at $1.90, reduces his price also to $1.90 without collusion or agreement, would you say that price competition had ceased when the prices became identical?

A. Under the assumptions that you have given me, I would not say that price competition had ceased merely because the price becomes identical.

Identical price is a phenomenon closely associated with competition, and certainly is not evidence of the lack of competition unless there are some other circumstances that are put in as assumptions.

44168 Q. Now, Professor Vaile, assuming that cement is a homogeneous commodity, that it is usually sold

44169 at delivered prices, that it is a heavy and bulky commodity, so that freight is an average of approximately 25 percent of the delivered price, that there are a number of manufacturers offering to sell at each destination, that the buyers including dealers, contractors, and Government officials are well informed on market conditions and prices, that each manufacturer is constantly and immediately informed by his salesmen and customers of the prices being quoted by all of his competitors, that the capacity to produce by the manufacturer is in excess of the current demand.

Assume that there is no agreement or understanding between the manufacturers as to price they will charge, but that each manufacturer determines his own price independently for himself and that such prices are the result of free competition, what would you say, Professor Vaile, would you expect the openly quoted prices at any destination to be generally uniform or different?

44170 A. Under the conditions that I am asked to assume, I should expect the openly quoted prices to be uniform at any moment of time.

44171 Q. Professor Vaile, in the preceding question and answer, what do you consider is the price of the cement?

A. I look at the matter of price as a legal concept almost. It is the money that changes hands at the time, place, point of change of ownership. Now, I think there was included in these assumptions, or at least there has been included in the other assumptions, to which I am talking, unless definitely instructed not to, the fact that it is the common practice in our hypothetical industry, is for ownership actually to change hands at the point of use. The price under those circumstances becomes—

Mr. Wooden: Now, Your Honor, I object to an economic witness going into the legal aspect of that question, and that is just what he is doing. He is assuming a legal conclusion, a legal phase. He is assuming a fact also that I contend is contrary to the record.

Trial Examiner Norwood: I think he is giving us his understanding of the word "price," and the sense in which he uses it.

Mr. Wooden: Well, he is giving legal constructions.

Mr. Leisure: Well, let me ask the question this
44172 way:—

Trial Examiner Norwood: Yes.

By Mr. Leisure:

Q. You said the price would be uniform, Professor. What did you mean when you said that?

A. Well, prices at the same point and under the same conditions of change of ownership.

Q. Now, Professor Vaile, assume that cement is a homogeneous commodity, that it is usually sold at delivered prices, that it is a bulky and heavy commodity so that freight is an average of approximately 25 percent of the delivered price, that there are a number of manufacturers offering to sell at each destination, that the buyers, including dealers, contractors, and governmental officers, are well informed on market conditions and prices, that each manufacturer is constantly and immediately advised by his salesmen and customers of the prices quoted by his competitors, that the capacity to produce by the manufacturer is in excess of the current demand.

And, assume that the prices openly quoted by different manufacturers at the same place and time are consistently uniform:

Will you state, Professor, whether the fact of such uniformity to you as an economist justifies an inference that such prices are the result of collusion or agreement?

A. No, it does not.

44173 Q. Now, will you state whether or not there is such a tendency towards uniformity of price for a homogeneous product irrespective of the method of marketing employed, in your opinion?

A. Yes, certainly, there is that strong tendency.

Q. Will you tell us whether or not the fact that prices are known by competitors and the fact that an orderly method of marketing is employed, have a tendency to produce such uniformity of price in the case of a homogeneous product?

A. There are two questions there, it seems to me. The first one, facts are known—was it to sellers; is that the way the question reads?

Q. To competitors.

A. To competitors. That is, of course, a fact which in my opinion clearly tends towards uniform prices at a moment of time and place. I am not quite sure what the term "marketing in orderly manner" means. If it means that you have long-established customs in the industry which by trial and error have come to be customers in the

industry, and people, relatively small number of sellers operating in their own best interests continue to market in accordance with those customs, then I should say that also would be a strong, a force strongly tending towards uniformity of price.

44174 Q. What I had in mind, Professor, was,—I do not think it is quite clear from the answer,— do you mean operating in their own individual self-interest or operating as a group?

A. Oh, I mean operating in their own individual self-interest.

Q. In the case of cement sold in the way that I have described in the long hypothetical question to you, where is the market for cement?

A. I should say the market for any commodity is where the forces of supply and demand finally focus, that in an economic sense, at least. Now, the final focusing of the forces of supply and demand cannot be complete, it seems to me, until we reached the point of use, and since cement is sold by the original manufacturer at or close to the point of use, you come nearest getting the complete forces focused at the point of delivery in each sale.

Q. Now, on page 17721 of the record, Professor Fetter testified that under the basing-point system of delivered prices there was no market in the economic sense. What have you to say as to that statement? Do you agree with it?

A. I do not agree with it. I do not know what he had in mind. I do not know what he meant that there
44175 was no market in the economic sense.

Price is a directing force, and a market is a place where price crystallizes. There may be a market in that sense, wherever change of ownership takes place. It may be a chain of markets between original starting of products and final consumption of a final product, but in the industry as described to me in the hypotheses it is usually true that the change of ownership takes place at or near the point of use, and at that point you get an opportunity for focusing of the major forces of supply and demand that are going to be the final controlling forces in the direction of industry, of consumption.

44176 Q. Were you speaking of the change of ownership, Professor, in the economic sense? Is that what you had in mind?

A. Yes, and as set out in the hypotheses to which I am talking.

Trial Examiner Norwood: Did you make any factual statement as to where the change of ownership occurs in the sale of cement?

The Witness: No.

Q. Would you say, Professor Vaile, in the marketing of any product by a number of different producers, that it, or does the dissemination of full and complete information, in your opinion, as to supply, prices, sale, and so forth, tend to improve the competition?

A. On one assumption, namely, that what you mean by full dissemination of facts includes dissemination to both the buyers and sellers, then such dissemination of information does tend to improve the conditions of competition.

Q. And does that, would you say—or let me put it the other way around: Would you say that it has any tendency to create a better market?

44177 A. On the assumption that by "better" you mean a market in which the natural forces of competition, rivalry, independence of action, and self-interest may work themselves out to a logical conclusion, my answer would be yes.

Q. And, further, does it or does it not, in your opinion, have any tendency to create uniformity of price in the case of a homogeneous product?

A. Definitely so, yes.

Q. Professor, is it generally accepted by economists that in the case of a homogeneous product, one expects to find these—to have a uniform market price at any time and place?

A. Well, that is a factor which tends towards uniformity, and under the assumption you have freedom of action, that is what the economist expects to find, uniform price.

Q. Well, take the case of cement which in itself, we will assume, is a homogeneous product, would you expect this principle of uniform market price, which you say that economists recognize, would result in a uniform price at the mill in the form of uniform mill nets, or would it result in a uniform price at each point of delivery where the various buyers and the various sellers' representatives are meeting and negotiating contracts of sale?

A. Well, the uniformity that results from competition must arise from the fact that no buyer will pay more for

a homogeneous product to one seller than he will to
44178 another at a moment of time and point or place;
consequently, the uniformity that would arise out of competition must be uniformity at the point of use of the commodity. It can't be anything else if it is competition that brings about the uniformity.

Now, I would make one amplification of that, perhaps. In an industry in which you have organized wholesale distribution between the point of use and the point of production, for the purpose of wholesale the point of use must be the warehouse of the wholesaler, or the place where he does his business physically. If he uses a warehouse then his warehouse becomes the point of use, as I have used that term in the previous part of the answer, and there is the point where he will not pay more to one buyer—excuse me, seller—to one seller at a moment of time than he will pay to any other seller for a homogeneous product.

Q. Then, does your answer also apply, Professor, to cement as a homogeneous product, as I described in my question?

A. Yes, certainly.

Q. Professor Vaile, at page 17703 of the record,
44179 in response to a question as to what is the actual or true price of cement under the basing-point system of delivered prices, Professor Fetter testified as follows:

"In the matters in which the economist is interested as to price, it is the actual price of cement received by the cement company and paid for cement by the buyer not including freight, that the economist would be interested in."

What have you to say as to that statement? Do you agree with it or not?

A. Would you read the first three words again?

Q. "In the matters in which the economist is interested"—

A. Excuse me. Is the word "matters" plural or singular?

Q. It is plural.

A. I have had difficulty again in knowing just what was in Professor Fetter's mind, particularly when he uses, as I thought my memory was correct, the plural, "in the matters." I do not agree with his statement, and for the following reasons:

The economist certainly is interested in the effect which prices have on the direction of the use of resources, includ-

ing those directions right down to and including consumption of finished products. The economist clearly then is interested in the forces of supply as they are reflected—excuse me, in the forces of demand as they are reflected in price at the point of use. How an economist can escape being interested in that matter and in the price at
44180 the point of use, if he is thinking of the general direction of use of resources, I cannot see. It is that price which determines whether or not a consumer will use the commodity. Now, the economist is also interested in the price at the point of production, because it is that price which determines whether the producer will go on producing. The economist is also interested in the prices which the so-called producer has to pay, because after all his costs are nothing but other prices. He pays a price for labor,—looking at the other side of the shield, we call that a cost.

Now, the economist is obviously interested in analyzing the forces that lead to production and consumption, the forces that lead to a scale of living at the moment, and lead to the use of particular resources, in all of those prices. And so for the life of me I cannot see what Dr. Fetter was thinking about when he said the economist is interested in only one of those prices.

Q. Well, on page 17732, Professor Vaile, of the record, Professor Fetter testified that in the basing-point system the forces of competition converge in the long run upon the mill. What do you think about that? Do you agree with that statement?

A. Well, in line with what I have just said, of course, they converge there in the sense that it is there that the decision must be made as to whether or not the mill will go on producing. They also converge at the point of
44181 use because it is there that the consumer determines whether or not he will use cement, and that decision in point of that fact must come before the other decision can be based on completely known information. A producer, a manufacturer, may decide to manufacture and take a chance that he can sell the product, but he cannot know whether the price that he will get will pay the prices that he has to pay, will cover the prices that he has to pay other people, until it is known how the forces of supply and demand will interact at the point of use.

Q. Well, now, further on in the record at page 17732 and running for a considerable number of pages, Professor

Fetter testified that when the different cement companies meet the lowest price quoted by any competitor at any given destination under a basing-point system of selling, this was not properly described as meeting competition, and was not in fact competition at all. Do you agree with that testimony?

A. I cannot accept that position, no. In the first place, the more nearly perfect your competition the more nearly the only alternative open to the seller is to meet the market price. The typical wheat farmer with a small volume of wheat has no other alternative than to accept the market price in his selling. He offers his wheat at the market price or he decides to withhold it from the market in the thought that there may be a better price by and by.

44182 But he cannot go out and offer to sell his wheat at a higher price and expect to get any takers, in the ordinary sense of the wheat farmer, in the wheat-growing States with which I am familiar.

Q. Well, on page 17751 of the record, Professor Fetter was asked the following question:

"If it should appear in this record that less than 50 per-cent of sales of a number of basing-point mills were made at their own basing-point prices, and that the remainder of their sales were made at lower mill nets, some of them as much as 60 or 70 cents a barrel lower than their own basing-point prices, what, if anything, would that indicate to you as an economist as to the average level of such basing-point prices?"

And in response to that question Professor Fetter testified as follows:

"It would indicate that the base price must be decidedly high to permit such large reduction, and such a great difference between the base price and the net realized price."

What have you to say, if anything, to that answer? Do you agree with it?

A. I could not make that answer on the assumptions that were read to Professor Fetter, and, for several reasons. In the first place, in the hypotheses that have been put before me it is stated that you have mills in different geographical locations, and those locations are differently

44183 arranged geographically than the locations of consumption, and that the demand in the different geographic markets fluctuate not necessarily simul-

taneously, you may get an increase in demand in one section without increase in demand in other sections. Now, those assumptions are before me. Under those assumptions, and under the further assumption that I have already made, which it seems to me a truism with respect to competition, namely, that no buyer will pay one seller more at a moment of time and place than he will pay other sellers, that your sellers are going to get into any other market than the immediate one in which all other sellers are excluded because of competitive disadvantages, then it would be essential under competition that they meet the delivered price of the lower-cost sellers in those consuming markets, and that meeting of competition must of necessity result in lower mill nets, it is a mathematical truism that he must have different mill nets under those circumstances set before me.

Q. Now, also was included in the question that they absorb 60 or 70 cents,—I think it was—yes, 60 or 70 cents freight. Would that make any difference?

A. Well, that becomes a factual matter that I cannot discuss without more assumptions regarding the costs in general.

Q. Would it indicate to you, Professor, that there was a high level of price, the assumptions I stated to you?

A. That the base price was at a high level? No, the base price is held at a low—at a competitive level
44184 by the very fact that other mills are intruding into that territory and are absorbing freight.

Q. Now, passing to another subject, Professor Vaile: Will you assume that in the cement industry a large majority of the cement is sold to dealers so that dealers, as a class, have been characterized as the back bone of the industry.

And assume further that some manufacturers offer to dealers some marketing practice that would seem to dealers more advantageous to them than the practice formerly followed by this manufacturer or by his competitors, such as more favorable discount, or classification of business that gave the dealer a larger proportion of the manufacturer's business than other manufacturers were giving him.

And assuming further that dealers in cement are relatively similar in type, that is to say, that there is very little variation in the retail trade structure.

Can you state, Professor Vaile, what would be the eco-

nomic result to another manufacturer who did not change his practice so as to give at least equal advantage to his dealers?

44187 A. I think the result, and the dealers, under the conditions set before me, if they did not adopt either the same new practices, or others equally acceptable to dealers, they would lose their business.

By Mr. Leisure:

Q. And under the conditions stated, would or would there not, Professor, in your opinion, be pressure toward uniformity in such trade-practices?

A. There is a definite pressure toward uniformity, yes.

Q. Now, assuming that marketing practices such as discount, classification of business between sales to dealers and sales direct to consumers are uniform as between competing manufacturers, does such uniformity, in your opinion, raise any inference of collusion?

A. None at all.

Q. A moment ago, Professor Vaile, the Examiner used to you the term "rigidity of price." What are the general conditions that tend to produce rigidity of price, would you say?

44188 A. Well, you have a tendency to rigidity of price when you have little or no change in a competitive situation; that is to say, when you have essentially static conditions that would be one thing that would tend to rigidity of price.

I assume now that you are not speaking of cases where you have prices set by a Government agency. Of course, that is a fundamental condition under which you are likely to have rigidity of prices,—railroad rates, and things of that sort. But barring those things, you have a tendency to rigidity of price, first, when conditions are static. You have a tendency toward rigidity of price even when conditions, market conditions, are dynamic,—when you have a relatively small number of sellers each knowing, either from personal experience of from observations of history, that a reduction in price will be immediately met by his competitors and that—and under conditions of inelastic demand.

Now, the immediate meeting of the price by the other competers will mean there will be very little change, if any,

in the proportional potronage going to the various sellers. The inelasticity of demand will mean that there will be very little increase in total sales. Putting those two things together, then, there is a strong tendency for prices to remain rigid even though there are some dynamic changes in the supply-demand situation.

Q. Professor Vaile, would you say there is or is
44189 not any tendency toward equilibrium between marginal costs and marginal revenue?

A. Oh, I said yesterday that there is—under competitive conditions there is a strong tendency for equilibrium between those two things; yes.

Q. And will you tell us whether or not, in your opinion, Professor Vaile, there is any tendency toward a rigid price over a period once such equilibrium has been reached in the absence of a change in conditions?

A. Yes, certainly.

Q. If the demand for a product is very inelastic, and assuming conditions of imperfect competition in which producers are fairly large, in your opinion, would the fact of inelasticity of demand have any influence on rigidity of price?

A. Very definitely so, yes: I think I touched on that in the previous answer.

Q. You might give us your reasons, if you will, Professor.

A. The point is that if there is inelasticity of demand there will be no, or very little, increase in total sales with a reduction in price, and if the reduction in price is to be met almost instantaneously in an industry in which there are open channels of information by the prices quoted by other sellers, then there will be very little change in relative patronage, and, consequently, there is very little advantage to any seller that can be hoped for as a result of a lowering price, and particularly, then, if the
44190 sellers think this change in the demand-supply situation is to be a short-lived change. There will be strong tendency to resist or not to make a change in quoted price.

44191 Q. Professor Vaile, assume that cement is sold at delivered prices, and that from past experience manufacturers have learned that a reduction in price by one manufacturer is immediately met by others, and that

he gets little or no increased volume, but does get a lower price for his product. Under conditions of free competition would you expect each manufacturer to make successively lower prices?

A. That would depend upon how many sellers there were available to the given market. Upon the experience, maturity of judgment, as to what was going to be in their own best interests of those individuals, on the assumption that there is a relatively small number, and that they are experienced, mature people with respect to the conditions that you have just outlined, I should not expect them to make continued reductions in price, as suggested in the question.

Q. Well, Professor Vaile, assume that if a producer has learned by experience that if he reduces his delivered prices such reduction is certain to be met by competitors,
44192 would this fact have any tendency, in your opinion, to produce rigidity in price?

A. Yes. I have already given that as one of the reasons for rigidity of price, conditions under which rigidity of price arises.

Q. Does the fact that in any one locality there are only a few producers of cement have any influence on rigidity?

A. It certainly has, yes.

Q. Why, Professor?

A. You are asking why with respect to the small number of producers?

Q. Yes.

A. Well, because with the small number of sellers experience has taught that it is much more probable that they will all be informed and will see the effect of their action on each other and on themselves; and in addition to that reason is perhaps the better reason that the thing which any one of them does is a controlling thing in the market, because his share of the product offered is a substantial part of the total product.

Q. Would you say that price rigidity per se would justify an inference of collusion?

A. No.

Q. Assuming as a fact, Professor Vaile, that cement in most of its uses represents only one element of total cost, and usually a minor part of such total cost, would
44193 that, in your opinion, tend to promote price rigidity?

A. I am sorry. I missed the key word. What is it that is a small part of total cost?

Q. Cement?

44196 A. Under the assumptions that have been put before me concerning this industry, and now under the further assumption that cement in many of its uses is a small part of the total cost, I should expect that further assumption to be a reason for, or a force tending toward, rigidity of prices, because that assumption is almost the equivalent of saying that the demand schedule for cement is an inelastic demand schedule; that is to say, that as the price lowers, the amount of cement taken will not be materially increased, will not be proportionately increased, because that lowering of price is relatively insignifi-

44197 cant to the total cost of the project. For that reason it seems to me that the assumption is one of the forces—would be one of the forces tending towards rigidity of prices.

Trial Examiner Norwood: Then, would those forces operate, say, to operate in favor of rigidity in one class of trade and fail to operate in favor of it in another class of trade?

The Witness: Well, that, Your Honor, is a conceivable situation, if you put enough assumptions into it regarding those different classes of trade, and remove from the assumptions the assumption that this is a homogeneous product that can be bought for the various purposes in an open market.

Trial Examiner Norwood: Go ahead.

By Mr. Leisure:

Q. Under those assumptions, Professor Vaile, will you agree with Professor Fetter when he testified that the demand for cement was elastic?

A. Under what assumptions am I being asked that question? I am not clear.

Q. The just preceding question, that in most of its uses it represents a small element of total cost.

A. No. Under those assumptions I should not agree with Professor Fetter in his testimony.

44198 Q. You said you did not understand what Professor Fetter meant in the way he answered the question, Professor Vaile. Perhaps it will make the record more complete if you tell us why you do not.

A. Well, under the assumptions that have been put before me, that cement is a relatively small part of the total cost of the products with which it is used, or into which it enters, as I have already said, that is almost equivalent of saying that the demand for it will be inelastic rather than elastic. So under those assumptions I certainly cannot agree with Professor Fetter's opinion.

Trial Examiner Norwood: What would your answer be if you assumed that those sales where cement is a relatively small part of the operation were a relatively small part of the output and sale of cement?

The Witness: Now, let me, if I may, to avoid the charge of factual testimony in the cement industry,—let me give another illustration.

There is a certain amount of pig iron which ultimately goes into watch springs. Now, the fact that the demand, that portion of the total demand for pig iron that goes into watch springs would be extremely inelastic, pig iron being so small a part of the total cost of the watch, that would not tend, in my opinion, to rigidity of price of pig iron, unless there were—that taken by itself.

44199 Trial Examiner Norwood: Did it affect the whole to a very slight proportion?

The Witness: Practically unmeasurably, yes.

By Mr. Leisure:

Q. Well, without dealing with any other industry, assume in the building of bridges, certain types of bridges, there is no satisfactory substitute for cement,—a large office building—confine your attention to those kinds of examples—what would you have to say as to Professor Fetter's answer?

A. That is another situation in which inelasticity of demand arises. Where there are no adequate substitutes, you are almost certain to have—regardless of the total volume of demand—you are almost certain to have an inelastic demand.

Q. Is the cement industry, taking the facts as stated in the long hypothetical question, Professor Vaile, one in which you would expect active price variation?

A. You mean by "active price variation" chronologically fluctuations with the movement of time?

Q. Yes.

A. No. I think we have built up the reasons already why we would not expect in an industry as is described in the long set of hypotheses—I would not expect frequent price changes with the passage of time.

Q. Well, by comparison with any other method that you can think of, do you consider that the present method
44200 of marketing cement, as described in the long hypothetical question, is more or less likely to create and maintain rigidity of price?

A. I doubt that there is very much difference between—

Mr. Wooden: More or less than what?

Mr. Leisure: Anything; any other method.

A. I doubt that there is very much difference in effect on rigidity that would be caused by the so-called multiple basing-point system of pricing as described in this set of—quoting prices as described in these assumptions as contrasted to any of the other common methods of quoting prices used in American industries. I do not see that there would be much difference in rigidity.

It is not the method of quoting prices that gives rise to the rigidity but the other things that we have spoken of,—inelastic demand, small number of operators operating in their own best interest, and items of that sort,—rather than the method of quoting prices.

It might be argued that the method of quoting prices gives greater information regarding the competitive situation; that is, makes the competitive situation more nearly perfect in that regard. That increase in perfection of competition, if it actually occurred in this system of pricing, as compared to some other system of pricing, would, I believe, increase the rigidity of prices, because the rigidity of prices is a natural result of a competitive
situation in an industry such as is described, in my
44201 opinion.

By Mr. Leisure:

Q. I am not quite clear in your answer, Professor, when you said "small number of operators operating in their own best interest," you mean in their own individual best interest?

A. Yes, certainly. When I use that expression that is what I mean, in their own individual best interests.

Q. Professor Vaile, are there certain factors in an industry such as this which tend to restrict price increases?

A. Yes, I should say that there are several things in the assumptions put before me that would tend to increase—tend to restrict price increases.

Q. And what do you have in mind?

44202 A. The fact that—the very fact that in the industry there is the practice among the several mills of absorbing—so-called absorbing freight, that is to say, of getting into a competing position with other mills, tends to prevent any one mill from attempting to change the basic price situation in which it is under which it is in competition with a series of mills, the different ones of which have different cost relationships to the individual mill. The territory of the individual mill that starts a price rise, under this system of different geographic pattern of consuming points and producing points, is likely to be materially changed by that attempted price rise.

Moreover, it is in the assumption that in quoting an increase in price that increase is not actually charged until it is met by competitors. That tends to restrain the individual, it would seem to me, from making the intitial advance in price.

For those reasons, at least, it seems to me doubtful or less likely in an industry with a small number of operators such as this industry that an increase in price will be a frequent occurrence.

By Mr. Leisure:

Q. Now, will you also assume, Professor Vaile, that cement is competing with other construction materials?

A. That, of course, in certain parts of the mar-
44203 ket is very definitely true, and since the price to all confers is assumed to be uniform at a point, the price for one use must be the same as the price for another use, and the prices of competing commodities cannot easily be moved out of line with an original relationship. That tends certainly to restrict the opportunity for price rise.

Q. Assume, Professor Vaile, that in the cement business most companies have outstanding large obligations on specific job contracts, and that all of these contracts contain a clause protecting against decline in price, so that if the manufacturer's commercial market price at point of delivery declined they are forced to reduce the price on the contract cement that they have agreed to deliver for a long period ahead. What would you say? Would you or

would you not say that that factor would have any influence, in your opinion, on a tendency toward rigidity in price?

A. Yes. I should say that long-time contracts in which the price is guaranteed or protected, and which are in a sense one-way contracts, that is to say, the buyer is protected against a rise in price but the seller is not protected against a fall in price, definitely have the tendency to get the sellers to exercise restraint in changing price in either direction. The rise in price will not be effective, and the fall in price will run to business which has already entered into their calculations at the original price.

44204 Q. Assume further, Professor Vaile, that the cement manufacturers, most of them, have on their books contracts for delivery in the future over a period of a year or more, large quantities of cement, the contract stipulating a maximum price, so that in the event of an increase in the commercial price manufacturers do not get any advantages at all on that increased price on their contract obligations. Would you or would you not say that in turn would have any influence on the question of rigidity in price?

A. Yes. It would tend to prevent an increase in price; tend, therefore, to keep it rigid.

Q. Assume that in the event of the price advance it is the custom of the industry to give several days' notice broadcast to the trade of the effective date of such price advance, and that coupled with that it is also the custom to permit dealers to place orders within that period for any quantity of cement for which they will take delivery within 15 days thereafter. Would you or would you not say that those factors have any influence on the question of price rigidity, Professor Vaile?

A. I think they would have an influence to restrain the offering of prices at a higher level, because the effect of that offering would be of necessity delayed because of this trade practice.

Q. Assume that it is the custom in the industry to protect the dealer on price declines on cement recently
44205 purchased, either in transit or just received, so that on such declines substantial credits have to be given on all recent shipments. Would you or would you not say that this would have any effect on rigidity of price?

A. Yes, it seems to me that it would, because it runs

counter to the anticipations of the mill at the time it entered into its contracts to deliver cement, and naturally they would receive—take the lower price on business which they have guaranteed to supply.

Q. Now, Professor Vaile, will you assume further that certain companies have each a number of mills—

A. I am sorry. Least, did you say?

Q. Have each.

A. Oh, have each. Excuse me.

Q. —certain companies have each a number of mills, and that the territory in which each mill sells reaches to and contacts the territory in which another mill run by the same company sells, and that a company operating such a series of mills has found it necessary to change its price base at each of its mills if the price base at any one mill is to be reduced. Would or would not this situation tend to have an effect on stability of price, in your opinion—rigidity of price, in your opinion?

A. Well, yes, I should say quite definitely so. Under the circumstances where demand-supply conditions in 44206 one territory seem to justify or even dictate a change in price, if that change in price is to be extended to other territories where those new demand-supply conditions do not exist, that fact would lead to great restraint, it would seem to me, on the part of the manufacturer in giving the original reduction in price, or rise in price, which either is involved.

Q. Now, will you tell me as a fact, Professor Vaile, if the delivered prices in this industry are known to all competitors, would this tend to create rigidity of price, in your opinion?

A. Well, the completeness of information regarding the supply and demand situation under the other circumstances that have been put before me, a small number of mills each operating in its own self-interest, and so on,—the completeness of information is an important added factor in getting the individual mills, each operating in its own best interest, to hold firm on the present price.

Q. Well, now, Professor Viner—

Mr. Leisure: On pages 15646 and following of the record, Mr. Wooden.

Q —testified that if over a long period of time the base prices between two separate producing points have remained at a constant differential, he considers this to be

a rigidity which would be wholly inconsistent with the existence of active, genuine price competition.

What have you to say as to that? Do you consider
44207 that such facts show necessarily that there is no price competition?

A. Certainly not. If this differential has been originally established to an equilibrium point, then, unless there is a change in the cost of getting from the two mills separately to various points in the possible market territory of each of them, I see no reason at all to expect a change in the differential.

We have that same situation, for example, as between the wheat market in Kansas City and Chicago. Once a supply is thoroughly known, after harvest, having different qualities of wheat, and so on, there is a differential that applies to that year depending on whether wheat is moving north or south in part and the proportions of different qualities of wheat that are moving in the different directions. Now, unless somebody has different information, new information, about the relative quantities of the wheat of the different qualities located in different places, that relationship remains constant until there is a new crop changes the next year, because there is a change in the proportions of the different qualities of wheat as produced in the different producing areas. But as long as those basic conditions of production do not change, one expects, it seems to me, a constant differential between the two producing area prices.

Q. On page 17694, in response to a hypothetical question that a number of basing-point prices have been in
44208 effect without change for a period from January, 1933, to 1938, Professor Fetter gave the following testimony:

"Such rigid prices, I think, would be taken by any economist as indicating a lack of the normal or usual competitive forces at work. During all that time the delivered price to the buyers in every portion of the territory of those mills whose prices controlled those areas would have remained unchanged."

Do you agree with Professor Fetter's testimony on that point?

A. Not entirely. Had the same question been put to me, I would have answered it in this way, that the phenomenon of completely rigid price over this five-year period, or

whatever it is, needs explanation. It is not a common market phenomenon,—or, there are a good many other illustrations of it, but it is not the most common market phenomenon. But it needs explanation, and there are various possible explanations of it. And there have been put before me already this morning certain assumptions which I have already stated explains to me, with quite as much reasonableness as does the assumption of collusion or agreement, this phenomenon of continued rigid price for the period of time in question. In fact, I can't see why—I can't see any good reason why people who had agreed on the price among themselves would have held that price constant during that entire period. If you are going to have an agreement it seems to me—one of the basic tests of
44209 whether there was an agreement or not is the reasonableness in their own best interest of what they agree to, and this, it seems to me, does not meet that test.

Q. Would you agree with Professor Fetter when he testified—

Mr. Leisure: 17695, Mr. Wooden.

Q. —that "Even rigidity of a few months would be very extraordinary in any industry where there were competitive conditions"?

A. Oh, no, I do not agree with that at all—merely the statement as made.

44210 By Mr. Leisure:

Q. Professor Vaile, assuming the conditions of the cement industry as they have been stated to you in the long hypothetical question, and assuming further that during the period subsequent to 1933 the price of cement remained unchanged for a period of one year, does that fact of rigidity of price to you as an economist raise an inference of collusion?

A. No, it does not.

44211 Q. Why not, Professor?

A. Well, as I said in answer to another question, I would want to investigate that fact further to see why or what explanation seemed to me as an economist to be back of it, and I have already stated there are other things in this set of assumptions which to me much more logically explain the rigidity for a period of a year, or even longer, than would the assumption of collusion.

Q. Now, Professor Vaile, assuming the same conditions as to the cement industry, and assuming further that dur-

ing the period subsequent to 1933 the price of cement remained unchanged for a period of five years, does the fact of rigidity of price to you as an economist raise an inference of collusion?

A. In the—perhaps I should have raised this question before the earlier question. There is a contradiction between the present assumption and the long hypothesis, or a possible one. I would like that cleared up. The long set of hypotheses includes a certain amount of secret pricing, or occasional, at least, pricing, not at the posted price. I assumed in my answer to your previous question that that assumption remained in, that you were talking about the quoted, openly quoted prices, and I assumed—

Q. That is correct.

A. —that that is what you mean in this question.

Now, under those circumstances even the five-year
44212 period would not be, in my judgment, prima facie evidence of collusion.

Again I would want to look at the other facts, and again, even for the five-year period, it seems to me there are more persuasive probable reasons for rigidity than that of collusion.

Trial Examiner Norwood: Do you mean that of agreement as to what the price shall be?

The Witness: Yes. Yes, that is what I meant by the term. Yes.

44215 By Mr. Leisure:

Q. Professor Vaile, does an economist expect that a producer in competing with other producers will
44216 exercise any degree of self-restraint in his pricing policies?

A. An economist assumes that under the existing political framework in which they find themselves they will make every effort to act in their own individual best interests, and if it seems to them that the exercise of restraint is in their best interest they will so act.

Q. Now, Professor Vaile, taking the cement industry as described in the assumptions in the long hypothetical question, will you give us the same answer as to that situation?

A. You mean that under these assumptions would the individual producers tend to act—tend to exercise self-restraint in their pricing policies?

Q. I want to know in what way and why, from an economist's viewpoint.

A. Yes. I would say they would tend to exercise restraint,—they would almost be forced to,—because as they lowered their price they would know that that lowering price would be immediately met by other people, and they would know that they had an inelastic demand, which means that their total revenue for the larger amount of cement would be less than their total revenue for the smaller amount of cement which had previously been sold. And I can't conceive that their total costs would have gone down in connection with it.

For those reasons they would exercise restraint and lower prices only when it seemed absolutely essential to
44217 hold volume at all in their sales.

44218 Q. Professor Vaile, before the recess we were discussing the question of self-restraint. I would like to ask you if the producer in an industry exercises self-restraint in his market policy, does this negative the existence of free competition, in your opinion?

A. No, it does not.

Q. Now, Professor Vaile, I am going to take up the subject of diversions of shipments in transit by the buyers. The assumptions I would first like to take up are as follows:

Assume that a cement manufacturer usually sells his cement at delivered prices; that the great majority of his sales are to dealers; that a number of competitors are actively soliciting the purchasers of each dealer in the territory in which this company does business; that dealer good will is a valuable asset to this manufacturer.

And assume that this manufacturer sells in Town
44219 "A" at a delivered price of $2 per barrel, on which sale he nets, after deducting the freight rate, $1.50 per barrel.

And assume that this manufacturer sells in Town "B" at a delivered price of $2 per barrel, from which he nets $1.20 per barrel at his mill.

And assume that in each case the dealer pays to the railroad the amount of freight and remits the balance to the manufacturer.

And assume that a dealer in Town "B" orders cement to be shipped to that town, and after the cement is delivered to the railroad, the dealer diverts the shipment in

transit to Town "A," paying the railroad the 50-cents freight due for a shipment from the mills to Town "A" and remitting to the manufacturer the $1.20 per barrel, which was the mill net due to the manufacturer on a shipment to Town "B," so that this Town "B" dealer now has this cement in Town "A" at a cost of $1.70 to him.

Assume that this Town "B" dealer now sells this $1.70 cement in competition with the manufacturer's customers in Town "A" whose cement is costing $2.

And assume that the manufacturer's local dealers in Town "A" complain to the manufacturer and in some instances threaten to discontinue doing business with him and the manufacturer adopts a policy of preventing such diversions.

If, under these circumstances, would you as an
44220 economist say that this action is or is not consistent with individual action in the individual company's self-interest?

A. I should say that the action is consistent with individual action in the individual company's self-interest.

Q. Now, making the same assumptions as contained in the previous question on diversions, and adding the following assumptions:

Assume that manufacturers competing with the company referred to also sold cement to dealers located in Towns "A" and "B," and elsewhere, on which they received different mill nets.

That whenever a dealer buying from any of these manufacturers diverted cement to a destination at which the company had other dealers that the local dealers complained to the manufacturer making such sales.

Now, if an individual manufacturer discontinued the practice of permitting diversions would you as an economist say that this is or is not action consistent with individual action and individual self-interest?

A. It would seem to me that such action was rationally in the interest of the individual and consistent with individual self-interest.

Q. Now, making the same assumptions as contained in the last two questions on diversions, will you assume the following, that one individual manufacturer dis-
44221 continued allowing dealers to divert cement?

A. Discontinued, was that the word?

Q. Yes, that one individual manufacturer discontinued allowing dealers to divert cement.

A. That implies that previously that they had been permitting diversions; is that right?

Q. That is what I want to say, yes.

A. Yes.

Q. Now, if other manufacturers discontinued permitting diversions in transit, would you say, as an economist, will you tell us whether or not this raises, in your opinion, any inference of collusion?

A. No, it does not. It is clearly under those circumstances an essential to the meeting of competition, it seems to me.

Q. If some manufacturers took steps to prevent such diversions, and others did not, what in your opinion, Professor Vaile, would happen to the dealer business of those who did not?

A. Well, under the full set of assumptions I would suppose the other dealer business would shrink materially.

Q. Well, does the fact that for more than 20 years cement manufacturers have generally attempted to prevent such diversions tend in your mind to establish the fact that collusion exists, or is equally consistent with competition between producers?

44222 A. I should say that the conditions described are equally consistent with conditions of competition between producers.

Q. Now, passing to another subject matter, namely, that of trucking. I would like for you to consider a question in which I am going to make the following assumptions:

(A) Assume that the most important customers of a particular cement manufacturer are its dealers and that dealers in any one locality are in competition with each other in the retail distribution of cement;

(B) Assume that cement is usually sold at delivered prices; that a cement manufacturer, upon request, sold cement for delivery to trucks at an f. o. b. mill price; that a few of its dealers took truck delivery of cement, and that such dealers, from time to time, invaded the normal market area of other dealers of this company, and that these local dealers complained to the company and threatened to discontinue doing business with it.

Assume that a few of its dealers were able, through trucking, to deliver the cement at a lower delivered cost

than competing dealers in the same locality; and that the latter complained to the manufacturer.

Assume that the great majority of this manufacturer's dealers were strongly opposed to truck delivery and urged it to discontinue sales for truck delivery.

Assume further that another important class of
44223 its customers were the railroads, that they were dissatisfied with the traffic they were losing from truck deliveries and urged this cement company to discontinue sales to trucks.

Assume that the company's mill was equipped to load cement in cars and that the cost of loading in trucks was usually greater than that of loading on cars, and further that loading on trucks had a tendency to cause labor dissatisfaction because of irregularity of shipping operations.

If, under these conditions, this manufacturer who had been making deliveries to trucks at an f. o. b. mill price changed his practice in any one of the following ways, i. e.:

1. By refusing to make such deliveries to buyers' trucks;

2. By refusing to make deliveries to buyers' trucks and in place thereof offered to make deliveries by trucks, either owned by him or by contract trucker, at the same delivered price as charged for deliveries by rail;

3. Continued to make deliveries to buyers' trucks but charged a differential for loading such trucks;

4. Continued to make deliveries to buyers' trucks but charged a price equal to the delivered price as quoted for rail delivery.

Professor Vaile, to you, as an economist, is such action consistent with individual action in the individual company's self-interest?

44224 A. In my opinion, it is.

By Mr. Leisure:

Q. Under the same assumptions as stated in the preceding question, if this manufacturer after having changed to one of the four alternatives stated, he thereafter changed to another of such alteratives, or reverted to his original practice, to you as an economist is such action consistent or not consistent with individual action in the individual company's self-interest?

A. There is nothing contained in the assumptions that would make such action inconsistent with operations in the individual's own best interests, so far as I can see.

Q. Upon the same assumptions as stated in the original question on trucking, if the manufacturers competing with the manufacturer who has adopted one of these practices, should in turn adopt the same practice, would that action, to you as an economist, in your opinion, raise any inference of collusion?

A. No. It would seem to me rather to be a case of decision on the part of the second manufacturer just
44225 mentioned, and that he must meet the competitive practices of his competitors if he is to hold any patronage.

Q. If one of these competing manufacturers thereafter again changed its practice to one of the other alternatives stated in the original question on trucking, and thereafter the other competing manufacturers adopted the same practice, will you state whether or not to you as an economist such action would or would not raise an inference of collusion?

A. It seems to me it would not.

Q. We have had considerable testimony here, Professor Vaile, on the question of whether or not there is considerable waste from cross-hauling in this industry which would be eliminated if some other plan of marketing were adopted. Are there any forms of waste in what we may call free competition?

A. Yes. As long as free competition is not perfect or approximately perfect, there are wastes in it.

44226 Q. Is or is not cross-hauling one of these wastes that are incident to competition, would you say, Professor?

A. It very frequently is an incident to free competition, and it is a waste.

Q. Now, Professor Vaile, is there any way of determining without extensive study and analysis whether the waste of cross-hauling is any more important than the other wastes of competition?

A. No. That becomes a factual matter in individual instances.

Q. Well, so that your answer will be clear, will you tell us what you mean by that, what you consider the other individual instances of wastes in competition amount to?

A. Well, we discussed earlier, either yesterday or today, the question of overcapacity which grows out of competi-

tion, and that might be a greater waste in an individual instance than cross-hauling was in that instance, or
44227 that cross-hauling was in some other instance, that is the sort of thing I had in mind in the original answer, and the absolute fact of such a situation, duplication of effort, non-prudent investment in plants, and so on, could only be determined by a study, factual study, of the circumstances.

Q. Do you thing of any other items which you would consider in wastes in competition?

A. Besides cross-hauling, and overcapacity, overinvestment—well, of course, when you have sudden changes in demand you may have not only overexpansion of investment, you may have overcontraction of investment which also is a waste due to competition because it leads you to high cost when demand recovers. You have also the placement of people in their activities in places where they are not well adapted to the particular job in their efforts, lacking perfect information to find the place where they can contribue most to the general welfare as measured by the price that they can get for their services, imperfections of knowledge are constantly leading to misapplication of the resources, and differentiation of product, lack of homogeneity of product frequently causes plants to operate at relatively higher costs than they could if the commodity could be made more homogeneous, which is among the wastes of competition.

Q. What about such things as improvement in technique and advertising?

44228 A. Well, of course, you have in the path of all improvements which involve change in capital plant, you have obsolescence as well as either over or under capacity at a moment of time. That obsolescence with accompanying temporary unemployment of people as well as capital is an important part of progress which grows out of and accompanies competition?

Q. Advertising?

A. Advertising may or may not be a waste depending on how it is appiled, what its purpose is. If it is used to differentiate the product in the minds of the buyers in some unimportant detail, I suppose most people would consider that a waste of competition.

Q. Is the waste of cross-hauling limited to the in-

dustries that use basing points, in your opinion, Professor Vaile?

A. Oh, no, no, clearly not. In many industries, particularly industries selling consumer goods with very minor product differentiations, there is a great amount of cross-hauling varying in its importance relative to total price, of course, depending upon freight rates, but underwear made in Minneapolis is shipped to and sold in New England, and underwear made in New England is shipped to and sold in Minneapolis, and there is no appreciable difference except for the name, in some instances at least, which the consumer would be able at all to recognize.

44229 Q. How about the cross-hauling of grain, is that within your own experience?

44230 A. Yes, and there are some cases of competitive wastes there, although perhaps less than in some of the other instances of which I have spoken. Much of the apparent cross-hauling in the grain business is due to difference of quality. I am thinking now in terms of wheat as wheat, and its movement, but there is some cross-hauling; whenever prices in two markets get out of line the differential between the two prices gets out of line with the cost of movement from one terminal market to the other, there is likely to be movement, and every year that I have studied—and I have studied a good many of them—there is some movement back and forth between important terminal markets in wheat merchandising.

Q. What is meant to an economist by the term "overhead cost," Professor Vaile?

A. The term "overhead costs," I think can most concisely be defined as those costs essential to the maintenance of a business which do not arise directly out of nor are directly proportional to the volume of production in any particular period of time.

Q. Well, so that your answer will be more concrete, can you give us any examples of what you have in mind in that explanation?

A. Yes. The costs associated with the maintenance of a physical building, its repair, on the assumption that it does not shake to pieces more if the machinery is

44231 run all day than if it is run half the day; the maintenance of that building is an overhead cost not dependent upon the volume of production in a particular

period of time. The insurance on the building, fire insurance, similarly would be an overhead cost. In many cases the salary of certain key people in an organization remains constant regardless of the volume of output in a period of time. Those are illustrations.

Q. In general, is there any relation between the amount of overhead costs and the size of the plant investment required in relation to the annual volume of the product sold?

A. Well, I have spoken of the cost of maintenance of the plant as one of the forms of overhead costs. That includes, of course, not only repairs but complete cost to cover replacement, frequently spoken of by economists as depreciation. That is an overhead cost, and if the cost of maintaining, both from standpoint of repairs and final replacement, maintaining the building, are high, relative to the sales value or volume of product, then—well, that obviously is a direct relationship depending upon the volume of production; that as the volume of production goes down the cost of those overhead items becomes larger per unit; as the volume of production goes up, it becomes
44232 smaller per unit. I think that is an answer to the question you want answered.

Q. It does, sir.

I notice in the answer you use the word "high." "High" is, of course, a relative term. Professor Vaile, when you speak of an industry having a high overhead cost, what do you mean by the adjective "high"?

A. I meant in this use, and I should so mean unless I state it differently, "high" relative to the sales value of the unit of commodity.

Q. Now, when an industry has high overhead costs are there any forces found at work which influence its production policies?

A. Well, I think the question must mean when an industry has high overhead costs is that something that influences its production policies,—is that what the question means?

By Mr. Leisure:

44233 Q. That is precisely the point of the question.

A. Yes. It seems to me that the existence of relatively high overhead costs, that is high relative to the ex-

pected sales value of a product, or relative to the other costs, very definitely has an influence on the production policy of the particular enterprise.

Q. In what way, Professor?

A. If the overhead costs are extremely high, that is to say practically all costs are overhead costs, reduction of output of product does not reduce total necessity for outlay, for annual outlay, and consequently there is an urge under such circumstances to keep production up at approximately its previous level, that is what happens many times in the case of agriculture, where overhead costs are very high. It is impossible to fire your employees because you haven't any, family enterprise, cannot reduce that, because you cannot get rid of much of any costs in some forms of agriculture, at least; and, therefore, there is a tendency to keep production up to its previous level. That is an illustration of the way in which overhead costs sometimes affect an individual enterprise.

Q. Professor Vaile, in the cement industry as described in the long hypothetical question, do you see any connection between the assumed fact that they have high overhead costs and their desire to make sales in the territories adjacent to other mills by the device of so-called freight absorption?

44234 A. Yes, I do. There is very definite connection there, in my opinion. It runs in these terms, that since the overhead costs are high relative to total cost, or sales value, the additional costs of producing an additional quantity of product are relatively small per unit of product; and, consequently, a mill net price which permits the mill to intrude into,—intrude competitively into another territory, is likely to cover those direct costs and stay relatively low and leave something to apply towards the lump sum of overhead cost, and that would be in the interest of the company that is making—for which the decision is made.

Q. Well, Professor Vaile, assuming such high overhead cost in this industry, if the producers find that in spite of the most intensive sales efforts they are unable to secure all of the business in their own market territory, and that they are—and what they are able to secure is not adequate to keep the plant in operation at a point of reasonable

capacity, would this fact, in your opinion, have any relation to these freight-absorbing sales?

A. It would very definitely have a relation to a policy of having freight-absorbing sales, in my opinion, and that relationship would run about in these terms: The assumption being—the product being so nearly homogeneous, you cannot sell everybody in your community, you have unused capacity left as a result of the demand situation in your local community. If you can sell
44235 in some other community at a price which is competitively determined at that point of use, and which nets to you something more than your direct costs, your addition or margin of direct costs, gives you something more to apply toward your total of overhead costs, it is a rational action apparently in the interests of the individual making the decision, to conduct that type of business, and offers cement at freight-absorbing prices.

Q. From the point of view of the individual producer, Professor Vaile, would you as an economist consider these sales to more distant points at prices that yield a larger net return are advantageous as long as they contribute something to overhead costs?

A. Was that a larger net return or lower net returns?

Q. I said lower. I will say smaller. Change that to smaller, please.

"Q. From the point of view of the individual producer, Professor Vaile, would you as an economist consider these sales to more distant points at prices that yield a smaller net return are advantageous as long as they con-
44236 tribute something to overhead costs?")

A. Yes.

By Mr. Leisure:

Q. I am going to pass to another subject, Professor, and give you some assumptions in another question.

Will you be good enough to assume that on sealed competitive bids to governmental bodies experience has shown that the final award is made on the basis of total cost at point of use, including freight; that it has on a number of occasions happened that when on competitive bids one company bids a price lower than its competitors, the business is not awarded to such low bidder, but sometimes after such low bid is made public, all bids are thrown out and

new bids are asked, when all bidders bid as low or lower then the original low bidder; and it has also happened that the governmental agency has permitted other bidders to reduce their prices without a new letting, either to meet the original low price or to make an even lower price.

And assume that it has happened that when a company has bid on a competitive governmental letting a price less than its going commercial price at the destination in question, a competitor has usually reduced his commercial prices so that such reduced governmental price has often or usually been followed by a general reduction in commercial prices.

What effect, Professor Vaile, would the assump-
44237 tions, Professor Vaile, have upon price?
44239 A. I am not quite clear as to what the—what price is under discussion, is intended in the question; what effect would this have on price? If it is meant by the question the going price in the various consuming markets—

By Mr. Leisure:

Q. Price bid.

A. The general price structure or the actual prices that are being quoted?

Q. Effect on price. Do you understand, Professor, that I am attempting to direct your attention to the effect it would have on the price bid to the Government agency?

A. On these sealed bids?

44240 Trial Examiner Norwood: Yes.

By Mr. Leisure:

Q. Under the assumptions in the question.

A. Then I should say that the effect on the price bid in the sealed bids would be to make them conform to the governing mill price, base mill price, at the point of use or delivery to the Government agency plus freight. It seems to me that would be the clear tendency on the part of the sellers to quote in their sealed bids the governing mill base price plus freight to the point where the Government wants delivery.

Q. Do you mean the commercial price at the destination?

A. Well, I think they come to essentially the same thing, yes.

Q. Now, Professor Vaile, assume the facts that have just been stated, and assume further that on such sealed bids all companies bid the same delivered price. Does such uniformity of price raise an inference of collusion or it is compatable with individual competitive action, in your opinion?

A. Well, it seems to me it is just as compatable with individual competitive action for the prices offered the Government to be uniform as the prices offered any other buyers to be uniform, and I have already stated that that latter seems to me clearly to be a natural competitive action in the individual's attempt to realize his own best interest.

Q. Then would you infer collusion from that?

44241 A. I would not infer collusion from such action.

Q. And, Professor Vaile, if the Government asks for bids f.o.b. mill, will you state whether or not you would expect the f.o.b. mill price bids to be made with reference to the destination cost available to the Government from other sellers?

A. Well, on the assumption that the destination point was known, yes.

Q. Professor Vaile, if the f.o.b. mill bids were thus made, taking into account the destination cost available to the Government from other sellers, will you state whether or not you would expect the destination costs of the different bidders to be different or identical?

A. The destination costs or prices?

Mr. Leisure: Well, read it.

(Question read.)

A. Well, now, the destination costs to the Government are the prices at which the Government buys, at destinations, I take it. Now, the destination cost to the seller—

Q. We are talking about f.o.b. mill.

Trial Examiner Norwood: That is what the goods would cost the Government at the point of delivery?

The Witness: That was my understanding of the question, the destination cost to different bidders.

By Mr. Leisure:

Q. They are buying f.o.b. mill, you understand that?

44242 A. The destination cost to the bidders would be different, the prices that they bid would be the same but their costs, if that is what I understand the question

asks, their costs would be different since they are differently located, freightwise, from the point of use, point of intended use.

Trial Examiner Norwood: I think he was referring to the Government destination costs.

The Witness: Well, he has both of them in here.

Trial Examiner Norwood: That is what they paid for the material at the point of delivery. They refer to that as destination cost in the case of the Government.

The Witness: The destination costs to the Government would be identical.

By Mr. Leisure:

Q. And in consideration of your last answer, Professor Vaile, and if on such f.o.b. mill bids the destination cost to the Government of the different bidders was the same to you as an economist would such identity raise an inference of collusion?

A. No, not at all.

44243 Q. I would now like to ask you, Professor Vaile, if on such f.o.b. mill bids the destination cost to the Government of the different bidders was the same, to you as an economist would such identity raise, in your opinion, any inference of collusion?

A. No.

Q. Well, now, under the conditions that have been assumed as prevailing on competitive bids, and assuming that the dealer business is the backbone of the cement business, and that dealers learn of prices to governmental authorities, and demand an equally low price, would you or would you not expect a cement company to make a special low price on a governmental invitation involving a large quantity of cement?

A. Under the assumptions placed before me in that question, I would not expect them to make a low price to the Government.

Q. If in addition, Professor Vaile, to the assumptions stated in the previous question, we assume also that the Government from one or more of the mills which are probable bidders on this invitation, is entitled to land grant or special rates, and that these rates are possible of computation by the traffic employee of each producer, or that each producer secures a statement of the land-grant or

44244 special rate from the common source of information, namely, the railroad in question, would you or would

you not under such circumstances expect uniform bids?

44245 A. I should, under those circumstances, expect
44246 uniform bids. Bids are always made in terms of anticipated cost relationships which may not actually transpire but which govern the decision of the person making the quotation.

By Mr. Leisure:

Q. And under such circumstances, Professor Vaile, would you say that identical bids were any indication of collusion?

A. No.

Q. And would or would not such uniform bids under such circumstances be consistent, in your opinion as an economist, with the existence of competition?

A. Entirely consistent with the existence of competition, yes.

Q. Now, Professor Vaile, if we further assume that each producer has found from experience that if he gives a lower price to the Government in such bidding, his commercial customers demand on future sales an equally favorable price, would or would not this tend to restrain him from bidding a lower price to the Government and thus result in uniformity in bids, in your opinion?

A. Well, going back and including in the assumption, an earlier assumption, namely, that the dealer business is the backbone of the cement business, I should so conclude.

Q. Professor Vaile, if one producer should decide to bid to the Government on the basis of a lower amount than his regular commercial price, what would you expect the
44247 price policy of other producers to be?

A. The assumption here is—to be sure I understand it—that one manufacturer has made a special low price to Government, has not lowered his commercial price to other buyers; is that correct? Is that the assumption you are putting before me?

Q. That is correct; yes, sir.

A. Well, the answer to that question would depend upon certain other assumptions, it seems to me. In the first place, it would depend upon how important this particular item of business was, whether it would lead to retaliation. I assume that these sealed bids would not be known to other people, that the price had been lowered by one bidder until the bids had been opened, so nothing could be done

about it in connection with that sale. It might lead to retaliation. It might lead to the entire price level being forced down in line with some previous assumption that the commercial buyers would insist on the same price, the price that the Government obtained. It might in terms of self-restraint, if this was not a particularly important case, lead to no action on the part of other sellers. I would have to know considerably more about the relationship of this particular job to the general market for cement, it seems to me, before I could determine what the business men operating in,—what they thought to be their own individual best interests,—would do under the circumstances.

Q. To you as an economist, does a refusal to bid
44248 f.o.b. mill necessarily imply collusion or agreement?

A. No.

Q. Now, a moment ago you used "in comparison." You said compared with any other method; so that your answer will be clear will you tell us what other alternative methods in marketing cement you had in mind?

44252 Trial Examiner Norwood: I think the issue whether or not this particular method restrained trade, not whether it would restrain it less than any other possible method—

44254 Trial Examiner Norwood: And I think that this matter of lessening competition does not involve the question of whether two questionable methods, as between the two one is the least restrictive of competition, it is lessening competition, in that there is under a certain plan less competition than there would be under a lawful plan—

44258 Mr. Bond: Then, if Your Honor please, we offer to prove through the witness on the stand as a qualified economic expert that in determining whether competition is lessened or has been lessened in this industry by the marketing methods as stated in the hypothetical question to him, referred to as the long hypothetical question, he considers it a proper, and under the conditions, a necessary approach to compare the competition under the facts assumed with what it would be under any of the possible or to him conceivable methods of marketing which would be applicable to this industry; that he considers that possible alternative methods of marketing can be used by such comparison are principally two: First, the marketing through some recognized central market or series of central mar-

kets organized and having machinery for carrying on trade in cement at those points; and, secondly, by the sell-
44259 ing of cement by each individual plant entirely at it own doors at uniform f.o.b. mill prices.

That in addition, as a third possible alternative, he considers there is the possibility of placing a limitation on the amount of freight absorption, and for this, in his opinion, legislation would be necessary.

That in his opinion, on the matter of selling cement through a series of central exchanges, in view of the fact that cement, because of the heavy relative cost of freight, rarely moves over perhaps 300 miles, there would be a need for more central markets, a large number of central markets for this type of commodity, and more than for the commodities where central markets are used, such as grain and cotton markets, and the li- -stock markets; that in these latter cases the product frequently moves much larger distances, both from source of origin to central market, and subsequently from the central market to the point of consumption, those distances indicated in the assumption in question, which he would answer, and for this reason he sees the necessity for a very large number of central exchanges if this method of selling were to be adopted;

That in the opinion of the witness as an expert he considers that there would be certain disadvantages involved in the selling of cement through central exchanges,
44260 that these disadvantages would be measured both in terms of cost and in terms of a change in the personal relations between the buyers and the sellers; that these additional costs that would be involved would include the cost of operating the market, plus in all probability a greater increase due to brokerage fees than could be offset by reductions in the cost of the seller's marketing organization, and that in his opinion the change in personal relations between the buyers and sellers would result in somewhat less satisfactory service to the buyer in terms of promptness of delivery and similar relations, and would also be likely to result in less accurate and timely information reaching the producer as to the probable demand immediately following the fiscal period, and that these would in turn make economic operations and the planning of operations more difficult;

That in his opinion if these central exchanges were thus used for the sale of cement they would inevitably, or al-

most inevitably in this case become basing-points for the computation of prices;

That in his opinion as a student of these central exchanges that do exist, he would not expect that all transactions in cement would take place on the floor of such central exchanges, because in the central exchanges that do exist all transactions do not take place on the
44261 floor, and he sees no reason, therefore, why it should be expected in the case of cement;

That with such central exchanges he would naturally expect that each company would maintain a force of salesmen, that these would solicit the trade in much the same manner that they do at the present time, although perhaps with some modifications;

That in considering whether this method of marketing would result in any savings on sales expenses he doubts very much if such central exchanges would lessen the sales expenses of the different individual companies;

That, having in mind the fact that freight has, in our long hypothetical question, been assumed to be an important element in the delivered cost of cement, and assuming further that the cement would not physically move to the central market or exchange, then under those conditions it would in his opinion be necessary in each instance for the buyer to know the location of the cement that he was purchasing on the floor of such a central exchange unless some complicated system could be worked out by which the sales could be made on a delivered basis even though the cement was not physically brought to the central market. This would be extremely difficult to do, namely, to work out a system of delivered prices, and would probably be impossible if the central markets involved in
44262 speculative future trading in cement.

That in his opinion if the cement were marketed on such central exchanges only after first transporting the cement to such exchanges, that this would unquestionably involve waste both in back-hauling to the point of use as well as in handling and storage, because, in many instances, in his opinion, there would be either direct back hauling or else what he would describe as dog-leg hauling that could have been avoided by direct shipment from the plant to the point of consumption;

That in his opinion, therefore, cement is not a product which can advantageously be marketed through one or more central exchanges;

That he believes that such a system of selling through central exchanges would be cumbersome and expensive and not feasible;

That if it were thus sold on central exchanges in his opinion the effect on cost to the ultimate consumer would be that the price to the consumer public would be raised;

That he reaches this opinion because if the cement actually moved to the central market and thence back to the consumers there would be the additional freight and the loading and storage costs that he has previously stated, and that if it were not first moved to the central market there would be additional costs for the operating
44263 at central markets. He believes that these factors would tend to raise the cost to the ultimate consumer.

Turning then to the matter of uniform f.o.b. mill selling, the witness would state that he understood by such a proposal that it would essentially be a method of selling—

Trial Examiner Norwood: I think that will—his discussion of the f.o.b. mill market would be competent here. Just stop your proffer right there, and I will reject that, and give you your exception. It is all on the record there where you can take it up without any question at all.

You might proceed on that other subject there.

By Mr. Leisure:

Q. Now, Professor Vaile, turning now to the possible alternative of the f.o.b. mill substitute plan of selling, you had used that expression in your testimony. Will you explain a little further what you mean by that method, please?

44264 Q. Before I ask you the question as suggested by the Examiner will you tell us what your understanding is of an f.o.b. mill method of selling to buyers
44265 so we will have our terms defined?

A. Well, the f.o.b. mill method of selling seems to me almost self-descriptive. It is a system of quoting prices at the mill and having a change of ownership at the mill in terms of those quoted prices. Ordinarily, free on board—f.o.b. actually means free on board; that means loaded ordinarily on a freight car.

44268 Q. Professor Vaile, under such a method of selling at a uniform mill net, what, in your opinion as an economist, would be the effect of price changes on the market area?

Mr. Wooden: The same objection.

Trial Examiner Norwood: Well, now, do you mean by "uniform mill net" the net of any one mill being the same to all points, on shipments to all points?

Mr. Leisure: To all points.

Trial Examiner Norwood: It has no relation to any other mill.

Mr. Leisure: No freight absorption.

Trial Examiner Norwood: Go ahead.

The Witness: What was the latter part of the question?

Trial Examiner Norwood: Read it.

(Question read.)

By Mr. Leisure:

Q. What I mean is, Professor, if a mill raised its price what would happen?

A. Yes. Under the assumption that all mills happen to raise their price together, or lower their price together, in the same amount, there would be no effect on the market area.

On the assumption that one mill raised its f.o.b. mill net price and others did not, that area which formerly was the market of the mill so changing its price would shrink.

44269 If mill "A" lowered the f.o.b. mill net price, and that lowering was not followed by other mills, the area would increase.

Q. Now, assuming, Professor Vaile, that at the present time under the present method of selling there are two or more producers of cement seeking the available business at any point of the United States, and that at most points you have a number of sellers seeking business, and that usually one or more of these sellers is offering at that point on the basis of a mill net, that is, lower than what he obtains in the territory immediately surrounding his mill, would you say that under a method of selling on a uniform mill net basis with no so-called freight absorption you would have more or less competition than you have now?

A. I say that under those assumptions you would tend to have less competition than you have now.

By Mr. Leisure:

Q. Now, Professor Fetter has stated that there would be effective competition in the marginal area where two market areas of two separate mills met and overlapped in that kind of situation. To what extent would such mar-

ginal competition, to use his phrase, apply, or would it change your answer?

44270 A. Well, there would be—I quite agree with Professor Fetter that there would be competition at some point between these two mills, or presumably at a series of points where the freight rate was in the same ratio—freight rate from the two mills was in the same ratio. That fact would not change my answer to the previous question, because I assumed that that condition would actually be part of the uniform f.o.b. mill selling program or situation.

By Mr. Leisure:

Q. Now, Professor Vaile, assuming that it was required that all cement be sold on the basis of a uniform f.o.b. mill price to each respective producer, what have you to say, if anything would be the effect of this on price?

44272 A. As I understand the question, we have a situation of two mills, "A" and "B," each of which has for itself a uniform mill price to all purchasers. Those prices may or may not be identical as between the two mills. What would be the effect of that system on price as compared with, I assume, the present system of quoting prices.

The effect, it seems to me, would inevitably be, on the assumption of each of the two mills operating in its own best interest,—would inevitably be to raise the prices near each of the two mills, and lower the prices at the margin of competition between the two mills.

Trial Examiner Norwood: Now, that is just the reverse of what would happen under the basing-point system.

The Witness: No. I am comparing it with the basing-point system. I said it would not make a higher price at the point or away form the mill than at the mill. That is not what I said, Your Honor. What I said, it would make a higher price at the mill and a lower price at the margin of competition than under the present system.

44273 Trial Examiner Norwood: Yes.

The Witness: Which would not, in my opinion, increase the competition. It would have a different effect on price at one point than at another.

By Mr. Leisure:

Q. Now, Professor Vaile, under such a method of selling at a uniform f.o.b. mill price, what would you say as

to the probable effect on price if the principal point of demand were located rather closely to the mill and the amount of the demand at these points were sufficient to enable it to operate at any a reasonable capacity?

The Witness: I wonder if I may have, Your Honor, my last answer read. I think I have exactly reversed myself in it.

Trial Examiner Norwood: Read it.

(Last answer read.)

The Witness: No. That "raise" and "lower" should be reversed in that answer and in the subsequent discussion. I am sorry that I misstated myself.

Trial Examiner Norwood: How does that read now? Lower it at the margin of competition and raise it near the mill?

The Witness: No, just the reverse.

Mr. Wooden: I object to any change being made in the record as it first stood. I have no objection to the
44274 witness explaining.

Trial Examiner Norwood: Well, go ahead, then. Fix it in just the way it happened.

Mr. Leisure: I think there is a question pending. If you will read it, Mr. Reporter, please.

(Last question read.)

A. Well, under those circumstances, where there is an assumption that mill "A" does not have to meet the competition of mill "B" at all, or only with a very long freight haul from mill "B" and still can sell his entire capacity, he would be in a position to raise his price above the price that would exist under the present marketing system as described in the hypothetical question originally put to me, but only under that special circumstance.

Trial Examiner Norwood: In that case he would have virtual monopoly?

The Witness: Local monopoly, yes.

44275 Dr. Clare E. Griffin was thereupon recalled as a witness for the Respondents, and, having been previously sworn, testified further as follows:

Mr. Withrow: Could I have these papers marked for identification.

(The papers were marked for identification "Respondents' Exhibit 3465-A to 3465-K.")

Direct Examination by Mr. Withrow:

Q. Dr. Griffin, I show you Respondents' Exhibit 3465-A to K, and ask you if these are the changes which you wish made in the transcript of the record so that they conform to any statements you made while on the witness stand for the days Friday, September 13th, and Monday, Tuesday, and Wednesday of this week, the 16th, 17th, and 18th (handing the papers to the witness)?

A. They are.

Q. And do you vouch for their correctness?

A. I do.

44282 Q. Will you look at line 10, Professor Griffin, on record page 43671.

A. Yes.

Q. Is there a change which you would like to make in order to conform to your testimony?

A. Yes. the word "different" should be "differently."

Q. Now, would you look at record page 43673, line 7.

A. Yes. The word "of," the third word in the line, should be "for."

Q. Now, on page 43676, line 5.

44283 A. Yes. Two changes: The word "himself" should be "itself"; the word "accept" should be "accepts."

Q. And 43682, line 7, Dr. Griffin.

A. The first word should be "upon" instead of "that."

Q. And 43689, line 20.

Trial Examiner Norwood: Now, this is not going to get us anywhere, any further than receiving this exhibit.

Mr. Withrow: That was precisely—

Trial Examiner Norwood: My point is this, that I am not going to receive it, and I am not going to discharge this witness until the Counsel for the Commission has had reasonable time to compare those with the record and ask him questions concerning the same.

Mr. Withrow: Your Honor, before addressing myself to Your Honor's point, and in order to save time, could I ask that this document be physically incorporated in the record as the witness' testimony?

Trial Examiner Norwood: Yes.

Mr. Wooden: Subject to my right of deferred cross.

Trial Examiner Norwood: Yes.

The witness testifies to the following:

Page 43671, line 10, change the word "different" to "differently."

Page 43673, line 7, change "of" after the word
44284 "factor" to "for."

Page 43676, line 5, change the word "himself" to "itself" and change "accept" to "accepts."

Page 43682, line 7, change the first word in the line, which is "that" to "upon."

Page 43689, line 20, delete "the" between the words "greater" and "number" and insert the words "is not" after the word "them." Also delete "the" after the word "greater" and before the word "evidence." Line 22, change the word "any" to "an."

Page 43691, line 16, strike the words "could be." Line 20, change the comma after "product" to a period; delete "and" and change "that" to "That."

Page 43694, line 22, change "they" to "there."

Page 43696, line 8, insert "one" between the words "price" and "could."

Page 43697, line 1, change "that" to "but." Line 2, delete the word "that." Line 20, insert the word "a" before the word "different" and delete the comma after the word "form."

Page 43704, line 3, insert the word "and" at the end of this line.

Page 43707, line 5, substitute the words "for if" for the word "although."

Page 43713, line 11, change "reference" to "refers."

Page 43714, line 22, insert the word "not" be-
44285 fore the word "talking." Line 23, change "the" to "this."

Page 43716, line 8, insert a period after the word "circumstances" and start a new sentence with the word "You."

Page 43718, line 21, delete the comma after the word "because." Delete the word "while." Line 22, change the comma to a period after the word "involved" and start a new sentence with the word "It."

Page 43722, line 5, change the line to read: "Well, I have just now described administered prices, and". Line 6, insert the word "ask" after the word "and."

Page 43725, line 25, delete the first word in the line, which is "for."

Page 43735, line 25, delete the word "they."

Page 43741, line 14, substitute the words "the other" for the word "another."

Page 43743, line 10, substitute "of a depression" for "in production."

Page 43744, line 14, the line should read as follows: "that he would always accept a lower net in more distant markets". Line 15, the line should read as follows: "than in nearer markets, I should correct that." Line 16, the line should read as follows: "The assumption was clear that that distant sale". Line 17, change the word "lies" to the word "was."

Page 43745, line 1, change "of" after "kind" to
44286 "or." Line 6, delete "to." Change "with" to "or."

Page 43757, line 22, change "instance" to "instant."

Page 43759, line 22, change "sure" to "surely."

Page 43765, line 6, insert "so" at the beginning of the line before "that."

Page 43769, line 17, change the word "arises" to read "arising."

Page 43785, line 4 from top should read: "circumstances. In the industry described as it has been, and". Line 10 from bottom, place a comma after "That is." Line 8 from bottom, strike the comma after the word "industries."

Page 43787, second line from bottom, insert the word "the" between the words "that sort." Last line, delete the word "of" before the word "representing."

Page 43788, tenth line from top should read: "A. Well, I do not know that there is any point in arguing about". Ninth line from bottom should read: "tion, but I wanted to make it clear what limitations I wanted to".

Page 43789, first line should read: "not possible, but I agree that the matter in which he is".

Page 43790, twelfth line from top should read: "the prices that competitors are paying, and they would not like that". Fifteen line from top, change "than" to "that."

Page 43791, eleventh line from top, insert the word "a" between the words "as cost."

44287 Page 43792, first line, insert the word "a" between "is com—". Second line, change "phenomena" to "phenomenon."

Page 43797, seventh line from bottom, change "did" to "said."

Page 43800, line 4 from top, change "for" to "at."

Page 43803, tenth line from bottom, change to read: "be considered helpful, I think, by any student who was trying to determine". Eleventh line from bottom, delete the "then" in "comparison then would." Thirteenth line from bottom, insert "the" between "substantially same."

Page 43808, third line from top, insert "an" between the words "as alternative." Eighth line from top, strike out "the option of any—of". Tenth line from top should read: "ture in any important respect. In that particular one—".

Page 43810, second line from top, the eighth word in the sentence is "fairness." Twelfth line from bottom, change "inclusion" to "conclusion."

Page 43813, twelfth line from top should read: "subject, that I understand you are getting at, only if they lead".

Page 43817, fifth line from top, delete the word "all."

Page 43818, third line from bottom, delete the word "monopoly—".

Page 43820, eleventh line from bottom, change 44288 "manufacturing" to "manufacturer."

Page 43821, tenth line from top, insert "not" before "result" at the beginning of the line. Fourteenth line from top, delete the word "there." Fifteenth line from top, make the line read: "raise the price—I do not mean area used geographi—".

Page 43824, seventh line from bottom, insert "and" between the words "sort, their."

Page 43828, seventh line from top, make the line read: "me you have about an offset."

Page 43830, eleventh line from top, change "place" to "places." Thirteenth line from top, make the line read: "if a mill is located in the midst of a rich market, then is it not a".

Page 43831, fifth line from top should read: "trying to invade this market had to lower its own mill net—its".

Page 43833, thirteenth line from bottom, insert "from" between words "Not what".

Page 43845, fourth line from bottom should read: "was saying that there were some points in which this division of".

Page 43846, eighth line from top should read: "A. As

I did this morning, yes, there is a difference in degree. That degree".

Page 43848, third line from top should read: "to 44289 know the precise figure".

Page 43849, fourth line from top, delete the comma after the word "else."

Page 43857, eleventh line from top, strike the period after "marketing" and make "As" "as." Twelfth line from top, insert a period after "marketing." Fourth line from bottom, change "and" to "but." Third line from bottom should read: "tion, there probably would be an increase in the cost difference".

Page 43858, fourth line from top, insert a period after "men," and capitalize the "y" in "you." Ninth line from top, place a comma after "competition."

Page 43862, fourth line from bottom should read: "not accept that they are not competing in the two different ways. Now,".

Page 43870, seventh line from bottom, change the first "would" to "could."

Page 43871, third line from bottom, change "consistent" to "inconsistent."

Page 43872, second line from bottom, change "I" to "They." Last line, change "it" to "in."

Page 43876, thirteenth line from top, change "maize" to "maze."

Page 43882, tenth line from bottom, insert "a" between the words "more theoretical." Next to the last line, 44290 change "up" to "out."

Page 43888, second line from top should read: "A. I can't remember all of the places in which I used the term". Fifth line from top, delete the first "I".

Page 43902, line 25, delete the comma in this line.

Page 43903, line 17, insert the word "is" at the beginning of the line.

Page 43904, line 4, change the word "act" to "fact."

Page 43911, line 12, change "necessarily" to "necessary." Line 13, delete the word "or."

Page 43912, line 2, change "source" to "sort" and delete the word "in." Line 4, delete the words "as to" appearing after the word "precisely."

Page 43917, line 20, insert a comma after the word "that" and insert "not" after the word "certainly."

Page 43918, line 8, change "Now" to "No."

Page 43921, line 25, insert "and" after "method,".
Page 43927, line 19, delete ", but."
Page 43928, line 5, change "radical" to "radically."
Page 43929, line 13, change "now" to "not."
Page 43949, line 5, delete "I."
Page 43955, line 11, delete "not" between "would" and "be."
Page 43956, line 15, change "it" to "they."
Page 43958, line 3, change "mean" to "maintain
44291 them." Line 5, line should read: "between the uniform f.o.b. plan and this plan on the boun—".
Page 43959, line 5, insert "into" after the word "getting."
Page 43966, line 13, delete the word "certainly." Line 15, delete the word "for" following the word "time."
Page 43967, line 7, delete the word "quite."
Page 43971, line 3, change "when" to "was."
Page 43975, line 16, delete the "—" at the end of this line and insert in its place the word "that."
Page 43979, line 6, change "would" to "did." Line 22, delete "where."
Page 43980, line 1, change "is" to "as."
Page 43989, line 18, insert "might" after "manufacturers."
Page 43990, line 7, change "the" to "a." Line 18, change "permit" to "require."
Page 43997, line 14, change the word "win" in both instances in this line to the words "go in." Line 19, insert "not" after "is."
Page 44002, line 6, change "consistently" to "consistent."
Page 44006, line 13, change "be" to "know." Line 14, change "flowed" to "slowed."
Page 44014, line 7, insert the word "be" between
44292 "would" and "like."
Page 44021, line 4, delete "so" between the words "sometimes" and "been."
Page 44028, line 9, delete "," after the word "saying" and insert the word "in" between "saying both." Line 12, change "sources" to "forces." Line 15, change "up" to "out."
Page 44037, line 1, change "straddling" to "startling."
Page 44039, line 4, change "at" to "for." Line 23,

should read: "timony has covered very basic concepts of economics and".

Page 44072, line 19, "and any moment" should be "at any moment."

Page 44074, line 8, change "presumably" to "merely." Line 10, change "its" to "this" and delete "previous." Line 12, delete the word "any."

Page 44076, line 6, change "common place" to "common place."

Page 44080, line 15, change "course" to "courses."

44293 By Mr. Withrow:

Q. Dr. Griffin, one thing more I would like to ask you:

I show you the record on record page 44084, in the first answer indicated, line 6, would you tell me what question you were answering there?

A. I remember that incident very well. I was answering a question that had been put to me by Mr. Bond, and there was some intervening discussion, and I was asking to have the question read at the same moment His Honor was asking a question, and the question that was read was Mr. Bond's question, and I answered that question.

44297 ROLAND S. VAILE, thereupon resumed the stand and testified further as follows:

Trial Examiner Norwood: Proceed.

Direct Examination (Continued) by Mr. Leisure.

Q. Professor Vaile, would it be consistent with such a method of selling that we have been discussing, uniform f.o.b. mill price, to permit sales which were destined from more distant points closer to another mill to be made at prices which gave a lower mill net; that is to say, by the practice that has been called freight absorption?

A. Well, if you are going to insist on uniform mill net, obviously it is just a mathematical answer. No, there would be no possibility of freight absorption sales under the insistence on uniform f.o.b. mill net.

Q. Would such a uniform f.o.b. mill net price method have any tendency to create monopolies, in your opinion, Professor?

A. It would under certain circumstances, the type of local monopoly, or tendency towards monopoly, that I discussed with the Examiner a few moments ago.

Q. Now, Professor Vaile, taking the case where there are two or more mills at a single shipping point, what would be the effects of the uniform f.o.b. mill price in that case?

44298 A. I am afraid I could not answer that question without more information as to the competitive situation that existed under the other system; that is, the system of basing-point pricing, the amount of freight absorption that there had been, and the competitive situation at the margin between the territory of these two mills and the other outside mills.

By Mr. Leisure:

Q. Is there sufficient information for you to give us the market areas, would you say, Professor Vaile?

A. Well, the market areas would presumably be more clearly defined and restricted somewhat, since there would be no possibility of freight absorption and intrusion into the market areas of other mills.

Q. And what would be the effect, if any, of the competition between the mills in that group, Professor Vaile?

A. Of course, there would still be the presumption of competition between the two mills, but there would not be competition to the same extent, in my opinion, between those two mills and the mills located at other centers. That competition would be restricted to the point where there was some definite ratio of freight cost between the two points.

Q. Now, Professor Vaile, under this uniform
44299 f.o.b. mill method, take the case of two mills located close together and using the same shipping point, would you expect them to have the same or different uniform mill net figures as the basis for their sales in the territory in which this price was effective?

A. The two mills, under the assumptions put before me, would have to have the same mill net price, or else one of them, the one with the higher price, would not be able to sell in the territory at all.

By Mr. Leisure:

Q. And if one of these two mills under such conditions decreased its price, would or would not the other mill, in

your opinion, be under any compulsion to do the same if it were to obtain any sales?

A. Why, yes, it would be under economic compulsion, market compulsion, to reduce its price, or it would lose its patronage.

Q. And further, Professor Vaile, ~~under~~ such conditions, if experience had shown that a change of price by one mill was for the reasons stated invariably met by the other of the two mills, would there be any incentive for either to lower its price, if we assume the demand to be highly inelastic?

44300 A. Certainly very little incenfive, if any.

Q. Now, assuming that the various mills are selling on the basis described in the long hypothetical question, if a single producer undertook to restrict his own sales to the uniform f.o.b. mill basis, without having the demand in his marketing territory adequate to engage his plant in a reasonable percentage of capacity, would he, in your opinion, gain any immediate advantage by so doing?

The Witness: I am afraid I will have to have that question re-read.

Trial Examiner Norwood: Read it.

(Question read.)

A. I do not understand the question, Mr. Leisure. Does this refer to a change from the present described system of basing-point price to the uniform mill net?

By Mr. Leisure:

Q. Yes.

A. Oh, then I do. I did not realize it involved that change.

No, I can see no advantage to him in making the shift from the present system of pricing to a uniform mill net, under the assumptions placed before me.

Q. Would he or would he not be surrendering his freight-absorbing sales?

A. He would be surrendering them, yes.

44302 Washington, D. C.,
Friday, September 20, 1940.

44303 ROLAND S. VAILE thereupon resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Leisure:

Q. Professor Vaile, on page 44191, and again on page 44192, you used the phrase "small number of sellers." I am, of course, interested in knowing what you would consider a small number. I do not think that phrase is self-explanatory.

A. Well, I used the phrase, I expect, in both those cases in connection with the effective numbers on perfect or pure and imperfect competition. The absolute number would differ, of course, with different industries. The nearest to a generalized statement I could make would be a number so small that the action of any one
44304 had a measurable percentage effect on the total supply in the industry, and I should say specifically that the number described or postulated in the assumptions put before me in the long hypothetical question would be a small number for the conditions of the industry as described, as I am using the term.

Q. Now, again on page 17759 of the record, Professor Fetter states what he considers to be the disadvantages of this, the present method of marketing, from a public interest viewpoint. I want to ask you the same question as to whether you consider the present method disadvantageous from the public interest viewpoint, assuming, of course, that free competition is in the public interest.

Will you state, Professor, whether or not in your opinion as an economist this method of marketing is advantageous to the public interest?

A. Well, under the assumption that we are dealing with an industry in which free competition is deemed to be in the public interest, then I should say that this method of quoting market prices is, since it is a competitive method, is in the public interest.

Mr. MacIntyre: Now, if Your Honor please, the last part of the witness' answer is factual "since it is competitive" it is therefore in the public interest. He is therefore passing on a factual matter in issue.

44305 The Witness: May I, Your Honor, add to my answer?

Trial Examiner Norwood: Yes.

A. The parenthetical phrase "in my opinion," since this method is competitive, in my opinion.

By Mr. Leisure:

Q. We were discussing a certain series of questions dealing with f.o.b. mill shipments, and sales. Now, under such conditions as we were there discussing in the case of the producer next to the mill in question, whom we will call producer "B," for the purpose of this question, and who has been selling both in his own natural market area and also in the market area of the first producer, whom we will designate as "A," Professor Vaile, would "B" mill, in your opinion, derive any advantage from
44306 following the action of mill "A," and in turn restricting its sales to its own area?

A. That is "A," having restricted its sales to its own area, and ceased any policy of absorbing freight, would "B" derive any benefit by doing the same thing?

Q. Yes, sir.

A. I cannot see that it would. If we are speaking of a situation in which these two mills are the only two mills concerned, "A" is not intruding into "B's" territory, therefore "B" has all of its own territory. It can in addition intrude into "A's" territory by absorbing freight, and would do so unless it fears retaliation and reestablishment of the original situation. Under the latter assumption, if it fears retaliation and establishment of the original situation, it might decide as a matter of policy to follow the same practice, but only on that assumption. Otherwise, it would take all the sales in "B's" territory, intrude into "A's" territory for such additional revenue which it could get in that way.

Q. Well, now, Professor Vaile, under such circumstances would you as an economist expect mill "B" to follow the example of mill "A" if they could not see any advantage to be derived from so doing?

A. No.

Q. And under such circumstances if mill "B" did not follow suit and adopt the restricted method of selling, or the restricted method of selling that mill "A" had
44307 initiated, and mill "A" was left with insufficient demand in its own market area, would you expect

mill "A" to return to the former method of selling, namely, selling not only in "A's" territory but also in the territory of "B"?

A. Yes, that is what I should expect. It seems to me that would almost inevitably happen.

Q. Well, now, assume further, Professor Vaile, that both mills "A" and "B" undertook to restrict their own sales on the basis suggested by Professor Fetter, as I have outlined, would or would not the uniform f.o.b. mill plan be equivalent to dividing the territory between them?

A. It seems to me that is what it would come to, yes.

Trial Examiner Norwood: That is, you are assuming there that they are selling at the same f.o.b. mill price?

Mr. Leisure: No matter what the price is.

Trial Examiner Norwood: To divide it between them, would it be necessary to be selling at the same price?

The Witness: No, that would not be necessary, Your Honor, whether they had the same or different mill nets would merely shift the line of division.

By Mr. Leisure:

Q. Would such a uniform f.o.b. mill method of selling, in your opinion as an economist, have any tendency 44508 to affect the total mill capacity in different areas?

A. I do not see that it would.

Q. And would any temporary peaks of demand have any effect?

A. Well, in this sense, that if you had a demand that was in excess of the capacity of an individual mill locally, and if it was impossible under existing practices for supplies to be drawn from other mills at a freight-absorbing price relationship, then the mill might be expanded on the basis of that temporary peak of demand which, of course, would lead to over-capacity.

In other words, you would have a tendency, under the system as described in the assumptions you have put before me, it would have a tendency to have less flexibility in the movement of supply from individual mills, and under conditions of excessive temporary demand might lead very well to overexpansion of plant; overexpansion in relation to the normal trend of demand.

Q. Well, now, under these circumstances, Professor Vaile, what, if any, effect, in your opinion, would this tendency to increased capacity have on average costs of production?

A. Well, it would tend to increase the average costs that are necessary to take care of, to accommodate the peak demand, and even though price later did not cover those costs, capital investment, the capital would have been invested and would have become an inescapable social cost. In those senses, the tendency would be to
44309 increase the average total cost.

Q. And will you tell us, Professor, whether or not in your opinion under such circumstances delivered costs at various destinations would conform to a pattern similar to that which now exists in the territory about each mill to the extent that railroad transportation were used?

A. Well, the pattern would be—

Q. You understand, do you not, I say "such circumstances"; I mean, in other words, such method of marketing.

A. Yes. You are saying now that under conditions of uniform mill net what would be the pattern of prices relative to the price under the system described.

Q. Would there,—that is what I am asking,—would there be?

44310 A. Well, the pattern would be the same as under the present system, except where freight absorbing and intrusions modify the present system. In the system, the situation as described in the long hypothetical question, you have three different sorts of price patterns, and you have variations and exceptions to each of those. This pattern would be a radiating state of price, lowest at the mill radiating out to the point of division freightwise between the two markets; which is similar to the present basing-point system except for the exceptions that occur through freight absorption, and so on, in the present system.

By Mr. Leisure:

Q. But, I am—I think I asked about the territory immediately surrounding each mill, Professor.

Trial Examiner Norwood: Well, now, would these absorptions on this uniform f.o.b. mill system obtain if each mill varied its f.o.b. mill price in order to meet competition?

The Witness: Well, that, Your Honor, would not change the pattern of price at a moment of time. That question runs in terms of rigidity of price over a period of time, doesn't it?

The Trial Examiner Norwood: I am asking you.
44311 The Witness: If the whole system—well, I am trying to get your assumptions—if the whole system—if you are talking about uniform mill net, the whole system must change at one time, and you still have a pattern of prices, with the prices at various points varying by the amount of freight.

Trial Examiner Norwood: Or to meet that competition?

The Witness: Well, that then gives you non-uniform mill net and departs from the original assumption.

Trial Examiner Norwood: Then, your conclusions with respect to this uniform mill net would not be drawn?

The Witness: Of course, you put in a different assumption now, under the assumption which you have just made, that you do vary your mill nets to meet competition. I would assume that all the facts that have now been put before me in the hypotheses, and this assumption which you have just put before me, I would assume that the prices quoted in the various markets would be identical to the prices quoted under the present system.

By Mr. Leisure:

Q. Well, now, in the case of circumstances which you just discussed with the Examiner, under such a method which requires all sales to be a uniform mill price—

A. Before you ask that question, may I clarify my previous answer? I used the term "the prices quoted." What I meant to say was the prices quoted would result
44312 in the same delivered prices as the present system.

Trial Examiner Norwood: I understood it that way; yes, sir.

By Mr. Leisure:

Q. Professor, let me ask you this question:

Under such a method which requires all sales to be at a uniform mill price, assume an instance where due to a peak demand within a particular mill's market territory, which demand that mill was unable fully to meet so that a portion of the supply had to be produced from more distant mills, what would be the effect on cost to the buyer under such circumstances?

44313 A. The effect on cost to the buyer during the period of this peak demand and the inability of the local mill to supply the total quantity wanted would be to raise the cost.

By Mr. Leisure:

Q. Now, let me call your attention again to Professor Fetter's testimony, pages 18236 and 37, Mr. Wooden, where he gave an example of an industry that operates successfully on the basis of confining its sales to the territory within which it has an advantage of geographic location freightwise from other mills, the flour milling industry, and stated that he had this on the assurance of a member of the industry from Minneapolis.

Are you familiar with the conditions under which
44314 the flour milling industry markets its product?

A. In a general way, and with some quite specific information, yes.

Q. Then I would like to ask you whether or not you agree with Professor Fetter's statement that the flour milling industry is one in which each mill limits its sales to the territory in which it has the freight advantage?

A. That is by no means true as a universal; a company like General Mills has producing mills in various locations, and in part they produce the same quality of flour in each of those locations. They make the effort, so far as they can, then, to supply a natural area from each of their producing zones, but a company like Occident, for example, does not have mills so strategically located with respect to their market, and they sell in the entire eastern United States,—in fact, they sell, I believe, in the entire United States from a single producing point in competition with mills more favorably located freightwise in many parts of that market.

Q. And do they or do they not have freight absorption?

A. Oh, yes, they have to have freight absorption in some of their sales.

Q. Now, we have been discussing for some time this f.o.b. method.

I want to ask you, would you consider that if the members of this industry were to adopt such a uniform
44315 f.o.b. mill price method, would it or would it not, in your opinion, be indicative of competition or collusion?

A. It seems to me very unlikely, extremely unlikely, that a uniform mill net basis of selling in this in-
44316 dustry, as described, with its particular geographic location of producing points not conforming exactly to the geographic distribution of consuming points, that

in such an industry the uniform f. o. b. mill net policy of pricing could be adopted without some sort of collusion, agreement, or coercion.

By Mr. Leisure:

Q. Then, Professor Vaile, assuming that it were required that all sales be on the basis of uniform mill price and assuming further that the producer could legally evade this requirement either by the establishment of silos and packing establishments at various points, which would carry separate mill nets, or by establishing separate grinding plants at different points again with uniform mill nets, at each of these points, in your opinion as an economist, Professor Vaile, would such duplication of plant facilities for this purpose be desirable from an economic standpoint if they afforded no economies to manufacturing costs?

44317 A. In view of the final assumption, an engineering assumption, that there were no economies in manufacturing costs as a result of these new devices, then I can see no economic advantage in that expansion of facilities.

By Mr. Leisure:

Q. You used a phrase yesterday, Professor Vaile, "optional," and I do not believe the record is entirely clear. Will you tell us what you mean by "optional method of marketing"? Will you describe that a little more definitely for us?

44318 A. Well, the term as I would assume it to, as I used it, would mean that each seller is free in his own,—operating in his own best interest to sell in any manner that he wishes, and that he does, each seller does, offer to buyers the privilege of buying in either of two or more ways, and specifically I had in mind the privilege of buying either f. o. b. mill or delivered.

Q. Well, would you as an economist expect the buyer to examine his option?

A. Oh, of course.

Q. Why? For what purpose?

A. For the purpose of seeing which gave him the lower price, or, rather, the lower total cost at the point of use.

Q. Yes, but I still do not understand what he compared.

A. He would compare, on the one hand, the quoted delivered price against the quoted f. o. b. price plus trans-

portation costs, plus any other incidental costs that might be involved in getting the product to the same point that the delivered price provided him less any economies in getting to the actual point of use.

Q. Well, would you expect the purchaser to exercise his option to buy f. o. b. mill if it resulted in a higher delivered cost to him?

A. If it resulted in a higher cost at point of use, no.

Q. Now, Professor Vaile, will you assume that to some destinations the trucking costs from the mill are
44319 higher than the railroad freight rate, what effect would this have on the optional method which you just described, as far as such destinations are concerned?

44320 A. Well, I would assume that buyers in their own best interests would take the delivered price option under those circumstances.

Trial Examiner Norwood: That is, delivered price figured on rail?

The Witness: Yes, since that is lower than the f. o. b. plus trucking.

By Mr. Leisure:

Q. Well, then, what would the final result be, in your opinion?

A. The final result would be to use, at such points, to use the same method that is now being used.

Q. And I also have in mind, when I say "final result," the final result of this optional method which you just described.

Trial Examiner Norwood: What do you mean by "same method that is now being used"?

The Witness: The basing-point method as described in the hypotheses.

By Mr. Leisure:

Q. I will state the question over, Professor Vaile: What would the final result be of such optional method of marketing, as you conceive it?

44321 A. I do not believe we have enough assumptions in front of us at the moment to be certain.

Trial Examiner Norwood: Well, it would be a different result if the freight were higher than the truck?

The Witness: That is very true, Your Honor. You see, the assumption that is before me is that at some points

one method is more expensive than the other. Now, that is not a complete assumption.

Mr. Wooden: Your Honor, I am willing to concede, if it will help any, that the buyer will take whatever method that gets him the goods to the place he wants to use it at the lowest delivered cost. Now, I do not know why we have to bother with that.

Mr. Leisure: Well, thank you, Mr. Wooden.

Mr. Wooden: It is so obvious that it does not need any economist to expound it.

By Mr. Leisure:

Q. Just one further thing, then, on that line, Professor Vaile: This may be also equally clear from Mr. Wooden's standpoint, but I am not sure. Let us have the answer, anyway.

Assume that some dealers prefer to buy at destination, and some dealers prefer to buy at the mill, what would be the final result?

A. Well, if those two groups are in somewhere nearly equal proportions, and if there is no serious engi-
44322 neering difficulty in making the sales in the two ways, then I should say both methods, both options, would be taken; one option taken by one, and the other option taken by the other.

Q. Well, Professor, assume that there was one group that objected to delivered prices, or to f. o. b.—take them one at a time—to f. o. b. mill prices, and they were greater in number, what would be the final result?

A. Well, that would be a matter of business judgment, weighing the objection of one group against the desire of the other; and if the objection were really strong relative to the desire on the part of the other group, then I should say that the option would be discontinued in favor of the majority desire.

Q. Then, do I understand you correctly, Professor, that this method of selling—and when I say "this method of selling" I mean whereby the purchaser had the option to take cement f. o. b. mill—would probably result in one method of sale in accordance with what the manufacturer thought the majority of his dealers really wanted?

A. Yes. I think that is very likely to occur.

Trial Examiner Norwood: Well, are you assuming there that he could not operate both methods at one and the same time?

The Witness: Under the assumptions that Mr. Leisure has made, that there is a strong prejudice on the part of the majority against operating the other method, in
44323 his own best interest then I would say that he would probably refuse further to grant the option.

By Mr. Leisure:

Q. Well, Professor Vaile, under such an optional method, what would you expect to be the determining factor in the buyer's opposition as to which method he would use in purchasing?

A. Cost at the point of use.

Q. Would you expect that such an optional method would improve or disrupt the relations of a purchaser with his dealers?

A. Well, at the time of change it certainly would disrupt the relations with the dealer.

Q. I meant to say "sellers." I said "dealers."

A. The sellers' relations with the dealers, that is the question?

Q. Yes.

A. The sellers' relations with the dealers. At the time of the change it would tend to disrupt th se relations, and moreover if the method resulted in the same sort of thing which we discussed yesterday with respect to diversion, that is to say dealers because of a difference in price arrangement, cost arrangement, actually become distributors and distribute out from their point of receipt to other dealers, you would have a very great disruption of relations between the producer and his dealers. This dealer who takes truck delivery might attempt to sell to
44324 competing—dealers competing against the producers' original dealers in some other town, just as in the case of diversion; and therefore the producer would be reluctant to continue the option if that sort of thing occurred in a few, but only a few, cases.

Q. Well, under this optional method whereby the buyer could purchase either f. o. b. mill or on a delivered basis, would there or would there not be more or less competition between sellers, and under what has been described to you as the present method of selling?

A. By sellers now you mean the producers?

Q. Yes, sir.

A. I do not see that it would make any difference in the degree of competition between the original producers.

Q. Now, as to all these methods we have been discussing, Professor Vaile, we have been discussing various alternative methods of marketing, would there be pure or perfect competition under any of these methods, in your opinion?

A. Well, certainly not under the assumptions concerning this industry; you have too small a number of sellers and too large a specialized investment in capital plant.

Q. Well, under any method of marketing in an industry such as described in the hypotheses, in my long hypothetical question, could there be either perfect or pure competition, in your opinion?

A. Certainly not.

44325 Q. Why not?

A. Well, for the reasons I have just stated. You have in the assumptions a small number of sellers, immobility of plants, high capital costs, specialized type; those two reasons, themselves, are sufficient.

Q. How could you make competition more effective in this industry under the assumptions in the hypothetical question?

A. Well, there are various ways, it seems to me, by which that could be done. One would be to increase the accuracy and promptness of information available to buyers and sellers, that is one of the criteria or circumstances that is essential to complete competition. Another would be by increasing the number of firms actually selling. That would increase competition. That might not, by doing so, lessen cost or prices through that particular means; that would become, in part, an engineering fact as to whether the smaller plant could operate at as—on as economic basis as the larger ones. I pointed out before that competition could not always lead directly to efficiency under the physical engineering geological facts of the world.

We could increase the smoothness of competition if we decided and could police the competition to prevent services being sold with cement. That would be a way by which we could, if we wanted to, increase the smoothness of competition, because it would increase the

44326 homogeneity of the product that finally changes ownership.

Now, those are the sort of things that would increase smoothness with which competition could operate in an industry. Since those are the essentials, criteria, of com-

petition, those are the things that would have to be done, in my opinion, in order to increase competition.

Q. Now, passing to another subject, Professor Vaile.

Counsel for the Commission, at page 17639 of the record, propounded the following hypothetical question to certain economic experts called as witnesses for the Commission:

"Assume that there is a general practice in the cement industry of mills quoting and selling only at delivered prices and of refusing to quote and sell f. o. b. mill.

"Assume that some mills and some groups or clusters of mills are basing points and that some other mills are non-basing points.

"Assume that delivered prices are the equivalent of base-point prices plus rail freight from base point to destination and that the lowest combination of base price plus rail freight determines which base-point price will govern at any particular destination.

"Assume that when delivered prices are made as described the delivered prices of all mills become identical at the same destination and that non-basing-point mills match the delivered prices at particular destinations 44827 of the basing-point mills.

"Assume that rail freight is ordinarily paid by the buyer to the railroad company; is then deducted from the face of the invoice and the balance paid to the seller.

"Assume that the mill nets of each non-basing-point mill vary between its respective customers depending on the differences in freight to their respective destinations, higher mill nets being received from its nearby customers than from its more distant customers.

"Assume, also, that when selling for delivery at destinations governed by other basing-point mills the mill net prices of each basing-point mill also vary between its respective customers depending on the differences in freight to their respective destinations, higher mill nets being received from customers in territory governed by it than from customers in territories governed by other basing-point mills.

"Assume, also, that substantial shipments are being regularly made by basing-point mills into the territory governed by other basing points.

"Take all of those things together and then tell us whether or not, in your opinion, that corresponds to any sort of competitive method of pricing with which you have

become familiar in the course of your studies and experience?"

Professor Vaile, I would like to ask you to answer the same question.

44328 A. Well, if the assumption in the third paragraph, "Assume that delivered prices are the equivalent of base-point prices plus rail freight from base point to destination and that the lowest combination of base price plus rail freight determines which base-point price will govern at any particular destination," if that is an absolute universal, then I should say I doubt that the condition would have arisen under competition, that I have never seen in my study of price such a situation arise under competition. If, on the other hand, that assumption is modified, as in the assumptions which you place before me, that there are often occasional departures from that as an absolute, then the rest of this description does, it seems to me, compare quite closely with other pricing situations in other American industries, which American industries seem to me as an economist to be highly competitive.

Q. Well, let me ask you further, Professor Vaile, in your opinion as an economist are the marketing and pricing methods described in the last question consistent with the existence of competition?

A. With the one modification that I have already made, I should say that they are definitely consistent with competition.

Q. Does the existence of these marketing and pricing methods, as described in Mr. Wooden's hypothetical question, imply collusion or conspiracy, in your opinion?

44329 A. No, I think not.

Q. Now, in respect to this long hypothetical question Mr. Wooden asked Professor Fetter, and which I have already read to you, Professor Fetter testified, page 17645 of the record, Mr. Wooden, that the conditions described in Mr. Wooden's question did not conform to any typical competitive selling method.

Do you agree with that statement?

A. Well, I can neither—I was going to say I can neither agree nor disagree. As a matter of fact, I cannot agree with it because I do not know what he means by a typical competitive selling method. I do not think there is any such thing. Industries alter circumstances, and we have, even under conditions of what I would call keen competi-

tion, we have varying and various methods of selling and of quoting prices. Perhaps he meant that it did not conform to any typical method of competition because there is no typical method of competition. If that is what he meant, I would be inclined to agree with him.

Q. Professor Vaile, do you think that this system as described in Mr. Wooden's hypothetical question would facilitate the maintenance of rigid prices?

A. On the same assumption that I have mentioned earlier, namely, that paragraph 3 is an absolute and universal, it seems to me this system might contribut to rigidity of price, otherwise, it does not seem to me
44330 that the method of price contributes to rigidity of price at all. I mean by "method of price," method of quoting prices.

Q. In answer to a question by Mr. Wooden as to what was the wholesale price of cement under the pricing method he had outlined in his long hypothetical question, Professor Fetter testified as follows,—page 17656 of the record:

"The word "price,' as applied to a market, priced in and at a market, is a freightless price. It is a price which does not include an element of freight. The word "delivered price' is a compound term meaning both the price of the cement and the price of the freight necessary to transport the cement from the place at which it is sold to the destination."

And continuing, he said:

"I should say there is no price in the ordinary economic sense. You are using the word 'price' in a different sense."

What have you to say, if anything, as to Professor Fetter's conclusions? Do you agree with that testimony?

A. I certainly do not agree with the testimony. There are very few commodities, manufactured commodities, even if sold at the point where they are put into their final form, that do not have in their price some transportation costs of getting the materials to that point. The expression which Mr. Fetter has set up as a universal seems
44331 to me a fictitious, academic expression that is pointless. Certainly in the English fairs that he talked about, the cost of transporting the goods to the English fairs was included in the price. Very few of those goods, if any, were produced at that point, the point of the fair. I pointed out the other day that for certain purposes the

economist is interested in analyzing a cost-price situation at the point of production. He is also interested in analyzing a cost-price situation at the point of use for other purposes. To call one of those things a price and the other not is, it seems to me, highly arbitrary and not either the result of or conducive to clear thinking about the economic relationships under discussion.

Q. At page 17686 of the record, Professor Fetter expressed his concurrence in the general economic principle that under free competition prices of a homogeneous commodity in a given market would tend to be uniform, but he said that that principle had no application to goods sold at different destinations on delivered prices under a basing-point system, and he stated that in the kind of market that economists conceive in stating this general principle, they thought of all buyers and sellers being gathered together in one spot.

Do you agree that the principle of a uniform market price under free competition for a homogeneous commodity in a given market has no application to delivered
44332 prices under a basing-point system, Professor Vaile?

A. No, I do not agree with that, and for these reasons: It seems to me we have got to look at what it is that causes the tendency to uniform price under competition. It is tied up with the assumption the buyers act in their own interests and the buyers have full knowledge of the possibilities. Under those conditions no one buyer will pay more for the commodity than he has to pay, and he will make strenuous effort not to pay any more than other buyers pay at the same moment and same place. Now, that force can operate only at the point or in consideration of the points where the buyers want to use their commodity, and, consequently, the uniformity of price must be in terms, as it rises out of this competitive pressure, must be in terms of the fact that producers—excuse me, consumers, users of a product—are collected at a point. No user of a commodity will pay more than his rival user without a strenuous fight, and no user of a commodity will pay more to one seller at his point of use than he will pay to another seller at that point of use. That is the origin of the tendency, it seems to me, towards uniformity of price under competition.

Q. Do you know of any other economic writer other than Professor Fetter who has advanced that theory, that

the theory of uniformity of price rule has no application to delivered price?

A. Well, there are some fragmentary parts of Professor Commons' writings, some fragmentary parts of Pro-
44333 fessor Viner's writings, that perhaps for special purposes set up that concept. I think neither Professor Viner nor Professor Commons have been entirely consistent in their treatment of this subject, but they do, both of them, treat it in much the same way as Professor Fetter at certain points.

Q. Professor Vaile, assume that in the summer of 1932 the base prices of cement in the Middle West were generally advanced forty to fifty cents a barrel, and assume at that time the demand for cement, and therefore the consumption of cement, was declining, and assume that in the period from 1930 to the spring of 1932 the base prices of cement had steadily declined, so that throughout the Middle West the base prices of cement had declined from, say $1.50 to 75 cents, and assume that at a base price of 75 cents all the mills regarded this as unprofitable.

Will you state to what extent you consider such an increase in base price at that time was inconsistent with the existence of a freely competitive market?

A. Well, it does not seem to me that it is inconsistent with a freely competitive market at all, under the
44334 assumptions in this industry that you have a relatively small number of producers widely geographically separated, and under those assumptions that you have just put before me, namely, that each of these producers considered his present—his operations at his present price unprofitable, and under the further assumption that has already been put before me that the demand at any moment of time is inelastic. Under those assumptions—and those, it seems to me, are all that are necessary—I can very easily conceive of this price rise having been the result of each individual operator proceeding in what he believed to be his own best interest.

Q. And would you say that such an increase was consistent with the so-called law of supply and demand?

A. Yes, entirely consistent with the law of supply and demand, as far as I can see.

You see, there is a further circumstance that has been put before me that makes this even easier to accept as competitive—as the result of free enterprise, free compet-

tion, and that is that in this industry, because of the custom that has grown up of announcing an advance in price but not putting it into operation unless others followed, there was an opportunity to experiment to see whether or not it would be more profitable or unprofitable at the moment. They could see whether they could get into a more profitable position by advance in price. It seems
44335 to me perfectly consistent with competition and in their own best interests to have done so.

Q. At pages 17695 and 6, in response to a question stating that a number of basing-point prices were advanced in July, 1932, from 85 cents to $1.25 a barrel, and there was no other fact stated as to the antecedent course of prices or as to the cost of manufacture, Professor Fetter testified that this would seem to be an extraordinary phenomenon, and he continued that his answer would not be affected if it were shown that the prices prior to July, 1932, were abnormally low because he considered that the ability to raise prices by that amount in the very depths of the depression was indicative of a power of control over prices.

What have you to say, Professor Vaile, if anything, to that testimony? Do you agree with Professor Fetter on that?

A. Well, if you give a very liberal or loose construction to Professor Fetter's phrase "power of control over prices," I would have to agree, of course.

The price went up as a result of something. Now, what that something was is the important thing, it seems to me, and clearly what that something was could have been the natural operation of individuals operating independently each in what he conceived to be his own best interest under the operation of the so-called law of supply and demand.

Now, the law of supply and demand announced, if not in its specific statement, certainly as a corollary, that a
44336 producer must decide whether or not the going market price is the price at which he will produce. Under competition there is a going market price which faces the producer, and he must decide whether or not at that price he will produce. If he decides that he will not produce at that price he stops producing.

Now, under the circumstances in this industry he announced to the world that he would not continue to produce at the price. He raised his quoted prices. He may have been bluffing. He might have gone back to the other price

if no one had paid him the price, but with the inelastic demand consumers did pay the price. There was relatively little reduction in the supply—in sales on the assumption of the inelastic demand, and he got a price which he considered a price at which he was willing to operate.

Now, there is nothing, no evidence, it seems to me, of anything mystical or extraordinary or collusive in that situation, unless you assume that the assumptions concerning the characteristics of this industry are themselves extraordinary.

Q. Now, calling your attention to page 15695 of the record, if Professor Viner testified that in his opinion the pricing system of the cement industry as defined in Mr. Wooden's question would tend to produce and intensify depression in our national economy, do you as an econo-
44337 mist agree with that statement?

A. I do not follow his—I do not see his line of reasoning. I do not see how he came to that conclusion. As I recall the testimony, he did not give his line of reasoning. I would not come to the same conclusion.

Q. On pages 15639 and 15640 of the record Professor Viner testified as follows on the subject of meeting competition:

"Q. If the theory should be advanced that the system or method of pricing cement that I outlined in my long question is a method or system of meeting competition, what would you say as to that?"

Professor Viner answered that question as follows:

"A. I would say that if the term 'meeting competition' is supposed to be synonymous with a method of price competition, I would say 'No.' I would say it is a system of matching prices so as to avoid competition and that in a system of that sort I would interpret a price practice of that sort as intended to avoid price competition rather than as a routine carrying out of the forces of competition."

Do you agree with Professor Viner's conclusions?

A. No, I do not agree with Professor Viner's conclusions.

Competitive sellers always meet prices under the great majority of circumstances in a freely competitive market.

The wheat farmer who sends his wheat on consign-
44338 ment to Chicago sells it at the market price. He does not offer it at a lower price than the market price; he meets the market price. This whole discussion about uniformity of prices is involved, it seems to me.

Now, if what is bothering Professor Viner is the fact that we have rigidity of prices, that raises a different question, perhaps, but I have already discussed that.

The fluctuations in price up and down that are characteristic of the cash wheat price in the Chicago Board of Trade—I am speaking of the cash price and not the price of futures—are the result of two things: First, the result of differences in quality of individual cars. Leaving that out of consideration for the moment, there are fluctuations which result from changes in the guessing or estimate of the buyers and sellers as to the long time seasonal supply demand situation. Imperfection in the market, in other words, lack of complete and definite information is the explanation of those fluctuations, not activity of competitors.

Q. On pages 15641-3 Professor Viner testified as follows:

"Q. If the theory were advanced that identity of price is evidence of the existence of price competition, what would your statement as an ecenomist be on that?"

Professor Viner answered as follows:

"I would say that absolute identity, absolute and
44339 complete identity is a phenomenon which could never spontaneously arise from individual activity. That under the fullest and freest of competition there would be a very strong tendency for approximating of prices, in a certain sense; it would be a tendency always at work and probably always strong enough to prevent marked deviation, but the complete identity or uniformity of prices is a phenomenon, if it exists, it seems to me, which always reflects managed competition, in some sense.

"The identity of price which is approximated under full price competition would be an identity of the prices received by a producer at his mill or point of production without regard to the location or the color of hair or complexion of the purchaser."

Do you agree with Professor Viner's conclusions on that?

A. I do not. I have studied that answer of Professor Viner's quite carefully. It seems to me that here again he must have confused the two concepts of momentary identity and rigidity.

Take again the grain market, and you have momentary identity of price. You haven't anything else. You have sufficient information so that nobody at the moment sells at lower prices, or at least that frequently occurs in the grain

market. It is not an unusual phenomenon at all,
44340 and that is true whether there are a hundred carloads being offered in a day in Chicago or one carload or two carloads being offered that particular day.

Now, that prices should remain absolutely rigid with no experiments on either side of that price over a long period of time is a phenomenon that certainly would catch the attention of an economist who is studying prices. He would want an explanation of that phenomenon. But that prices are identical at a moment of time is merely an evidence that you have a good reporting system, nothing else.

Q. Professor Viner also said, as you would recall in my reading the answer to you, that the identity would be at the mill. Do you agree with that part of the statement?

A. Oh, no, not at all. Under the conditions of this industry the individual buyers are not interested as an economic—in an economic sense in the price at the mill at all. They are not interested in the labor conditions in the mill, the price that is paid for labor, or how the price at the mill is arrived at. What they are interested in is comparing prices they have to pay at the point of use. And as I have tried to make clear before—I will make it just as clear as I can—in my opinion, the uniformity that is expected under competitive conditions is the uniformity at the place of use. I modified that, you will recall, yesterday, to include, in cases where your conventional method
of handling involves a wholesaler who stores the
44341 commodity, then his price, the uniformity of price to him means uniformity not at the point of use but at the point of wholesale, the substitute of use under those contractual arrangements.

Q. On pages 15643, 44, 45, and 46 Professor Viner testified as follows:

"Q. Suppose you had a case where a base price at one figure were in effect on one side of a State line and a different base price in effect immediately on the other side of the State line and both of those base prices being put into effect by one base mill and recognized and observed and followed by its competitors.

"What competitive theory exists on which that could be explained?"

Professor Viner answered as follows:

"That sort of a pattern would demonstrate to me that

there was an understanding of some sort in that industry that a leader was to be followed with respect to price in a certain area and that whether there was competition or not, the competition, if it did exist, should not take the form of price competition in that area."

What do you say as to Professor Viner's answer to that question?

44342 A. Well, I should say that Professor Viner's answer was not a universal. There are other explanations which might or might not factually exist.

For example, I have seen exactly that situation occur in other industries where the cause of it was the peculiar intra and inter freight rate structure. Whether that is an explanation in a particular case becomes a matter of fact, but it can be an explanation of exactly that sort of thing.

So that Professor Viner's answer, in the first place, is not a universal for that reason.

Now, it is also true, it seems to me, that it is not a universal for another reason. The situation may very well occur in which mill "A" is the low cost mill in both these two points on the two sides of the State line and is the base point for these two points. Now, it may be a matter of convenience for that mill to have a zone price up to the State line and then go on the base plus freight. That could be a matter of convenience. And since this mill is the low cost mill, and since under the competitive situation that exists self-restraint and action in individual self-interest, and so on, other people are not going to cut in. Even though there is a division at the State line, he can have that sort of a division at his own convenience and for his own convenience without any collusion or agreement with anyone else.

44343 Q. What did you mean by "lowest cost"?

Mr. Wooden: Low cost.

Q. "Low cost." Did you mean a base mill?

A. I meant a base mill, yes.

Mr. Porter: Produce the lowest cost to the customer at the point of delivery.

By Mr. Leisure:

Q. Just explain that.

A. Yes, that precisely is what I meant. I would be perfectly willing to substitute through that answer "base mill," if that makes it any clearer.

Trial Examiner Norwood: Does that modification meet your objection?

44344 Mr. MacIntyre: If he meant to say instead of "cost" "base mill" in the answer, I think that we could not find any—

Trial Examiner Norwood: All right, go ahead.

By Mr. Leisure:

Q. Professor Vaile, how would you define the phenomenon of dumping?

A. Well, dumping, like so many of these terms, can be defined as a universal or as a partial concept.

As a universal concept, dumping is the sale by a single seller in one consuming market at prices that result in a lower return to his plant—mill net, as it has been used in these discussions—than his sales in the market immediately adjacent to his place of business.

Now, that concept is differently applied by different writers and differently hedged in. Many writers confine it to international markets, and confine it still further to a quoting of a price, an offering of a price in the foreign market, not merely for the purpose of meeting competition in that market but for the specific purpose of raising the price in the domestic market. Some even go so far as to hedge the concept to that point. Others do not.

I am not sure that—well, in fact, I am sure—let me put it posivitely—I am sure that I have not entered into the controversy concerning dumping sufficiently so that
44345 my definition is important to the Commission, but I will be glad to talk about dumping and its economic effect under any definition; that is, under any of these—with any of these restrictions that you want to put on it.

Q. Does your answer in which you define dumping include as a form of dumping the selling of cement at delivered prices by the use of basing points and freight absorption?

A. That would certainly be part of the universal definition of dumping, yes.

Q. Well, now, in the case of international dumping, Professor Vaile, as you have defined "dumping," what is the economic aspect or result of such international dumping on the market in which the goods are dumped?

A. Well, it increases the supply of the commodity

offered for sale in that market, and consequently lowers the price.

Q. Does that or does that not increase the effect on competition?

A. Does that or does that not increase the what? What was the adjective?

Q. Does it affect competition?

Does it affect competition? Yes. The entrance of new sellers, new supply, has clearly an effect on competition.

Q. Professor Vaile, would the economic effect of such dumping in domestic trade be similar, in your opinion, to the economic effect of dumping in international trade
44346 on the price of goods?

A. Well, assuming the same degree of dumping, it does not seem to me that the existence of a political boundary modifies the immediate effect. Now, we may get some political repercussions in the case of international dumping that are less likely in the case of dumping within the country; that is to say, you may get some retaliatory tariffs; or retaliatory dumping, on the part of an organized movement in the other country. Either of those things might happen as political phenomena that affected the later economic situation. Leaving those out of count, the immediate economic effect, it seems to me, is not changed by the existence of a political boundary.

Q. Professor Viner has testified at page 15632-3 that the systematic practice of dumping can occur only when there is monopoly control in the market at which the commodity was being produced. Do you agree with that?

A. I think the point hinges somewhat on the definition of the word "systematic."

Sporadic dumping certainly occurs without any monopoly control—continuously occurring without any monopoly control.

I can't either agree or disagree with Professor Viner's testimony because I do not know what he meant by "systematic." But I would point out that this other thing, sporadic, occasional, irregular dumping implies—certainly implies nothing about monopoly control.

44347 Q. Would you expect, Professor Vaile, that when dumping occurs in international trade that it is always the case that the dumped goods are sold in the for-

eign market at a less price than the going price in that market for domestically made goods?

A. Oh, no, that does not follow at all. On the assumption that the good is homogeneous, and that there is not some international prejudice against the mere fact of manufacturing in a foreign country, it would not be necessary to lower the price.

Q. So if Professor Viner at page 15635 of the record testified that in the case of domestic dumping where the exported goods merely matched the price of domestic goods there was no parallel in international trade, would you agree with that statement?

A. No, I should not agree with that statement.

Q. What, Professor Vaile, in your opinion, would be the effect of abolishing dumping in the cement industry as compared with the effect of prohibiting dumping in international trade?

44348 A. Well, now, in the answer that Professor Viner gave to the previous question, which I have just discussed, and which I said I did not agree with, he evidently was using dumping in a limited sense to mean selling at a price in the market on which the dumping is placed lower than the domestic price.

Now, in your question I assume that you use the term "dumping" in the domestic market in the other sense, that you are selling in this market, the market on which you were dumping, at a price lower than in your home market but not lower than the price prevailing in the other market.

Now, under those assumptions, using dumping in that sense, it seems to me that it is domestically a healthy competitive activity permitting persons to compete against each other and thus avoid the tendency of regional division between individual porducers and the limited local monopoly which results from that regional division of territory.

By Mr. Leisure:

44349 Q. Where reciprocal dumping exists, Professor Vaile, is it, in your opinion, indicative of competition or is it indicative of a collusive agreement?

A. Well, I can see no conceivable reason for producers operating in their own best interests to agree to have reciprocal dumping—no conceivable economic reason for such an agreement.

44350 *Cross-Examination by Mr. MacIntyre.*

Q. Professor Vaile, I believe you testified on direct that you had made considerable study of the basing-point practice in various American industries; do you recall?

A. Yes, to this extent, I think I qualified that statement by saying that all of my, or nearly all of my study was from secondary sources. That is, I have made no first-hand study of any large number of industries.

Q. You have made no investigation of fact firsthand in any basing-point industry in this country, or any other; have you?

A. That would be a little too sweeping, but that
44351 is the sense; so far as the basing-point system of quoting prices is concerned, my study has been from secondary sources.

Q. Now, as to the secondary sources, they have included writings by Professor Commons, and testimony by Professor Commons?

A. Yes.

Q. In the Pittsburgh, so-called Pittsburgh Plus case.

A. Yes.

Q. And any other writings or testimony of his that you have studied as secondary?

A. I do not recall at the moment anything else of his that is directly operating on it.

Q. And you studied the writings of Dr. Fetter?

A. Yes.

Q. And his testimony in this case, and in the Pittsburgh, so-called Pittsburgh Plus case.

A. Yes. I do not want my answer to imply that I have read all of Dr. Fetter's testimony or of Dr. Commons', either, in the Pittsburgh Plus case. I have read part of the testimony and certain summaries of the testimony of both those men.

Q. You have read all of Dr. Fetter's testimony in this case, have you?

A. I have.

Q. And as to secondary material on basing-point practice, you have read some writings by Dr. Fetter out-
44352 side of his testimony, of course, in these two cases?

A. Yes.

Q. Will you name such secondary writings—I mean such writings of his as you have read?

A. Well, they were a series of articles in which he and others engaged in some discussion appeared, as I recall it, in the American Economic Review, following the publication of a small book written by Willis and Byers, that I recall having read, in which Professor Fetter commented on certain aspects of the basing-point method of quoting prices. I have read Dr. Fetter's "Masquerade of Monopoly." Well, that is all that occurs to me at the moment.

Q. That is, that is all of Dr. Fetter's writings that you can recall you have read?

A. At the moment, yes.

Q. Have you read anything on basing-point practice that was written by Dr. Jacob Viner?

A. I ~~do not~~ recall anything of his except his testimony in this trial, that was directly on that subject. Let me say, Mr. MacIntyre, that I do not keep in mind the exact references that I have over a period of years read. Some of these things I read a number of years ago, and my saying that I do not remember reading other things does not mean that I have not read other things.

Q. Well, we are just attempting to—

44353 A. Yes.

Q. —find what fits within this description of meagre literature that you gave to the literature on basing-point practice, you testified to on direct.

I believe you stated that you had read Dr. Fetter's review of the Willis and Byers report on the Portland Cement Industry?

A. Yes.

Q. Did you read the Willis and Byers report?

A. I did.

Q. In its entirety?

A. Well, I read the thing that was published under book covers. Now, there may have been some other. That is what I am referring to, I did read that in its entirety, and assigned it as class room reading in one of my classes.

Q. That is, the entire book?

A. Yes.

Q. Entitled "Portland Cement Price," which was published just before the Supreme Court decision in the Old Cement case, 1924?

A. I cannot be certain of that chronology, but it was published about that time, yes.

Q. You have read a portion of the book entitled "Decline of Competition" by Professor Arthur R. Burns, that deals with basing point practice?

44354 A. Yes, I have read that entire book, and have assigned it as part of class room reading in some of my classes.

Q. You have read articles and discussions on basing-point practice that have been presented by Dr. J. M. Clark, of Columbia University?

A. Yes, I have read some articles by Dr. Clark on that subject.

Q. Can you name those that you have read of his?

A. Well, he spoke before the American Economic Association, I believe it was, or one of the associations meeting jointly with the American Economic Association, last Christmas on some phases of this subject. I heard that address given. I do not recall the titles of other articles that I have read, but I believe I have read one or two earlier articles of his that dealt in part with the subject.

Q. Have you read an article by Dr. J. M. Clark, in which he did not defend, or present a defense of the basing-point system, such as the one used in the cement industry?

44356 The Witness: Well, I have just stated one article, the address that he gave before the American Economist Association last Christmas, the exact title I cannot give you.

44357 Q. Well, what other writings on the basing-point practice in America have you read, Professor Vaile?

A. Well, I have read, for example, the 1932 Federal Trade Commission report, and not only have read it but have assigned it for class reading and discussion. Then, I believe their second report was 1933 or 1934. That also I have read. There is some discussion of, quite a series of discussions in Pittsburgh Plus specific case. I cannot identify it at the moment by the author and title. There is some discussion in each of many of our textbooks on marketing on this general subject. In point of fact, I have written one such brief discussion, a book which I have had published. I have read, I suppose, all of the discussions that appeared in the common textbooks on marketing that are used in this country. I have read in addition similar summary—brief summary statements or descriptions that have appeared in several of the economic textbooks other than those just in the field of marketing.

Q. Well, where mention has been made in such general marketing textbooks, Professor Vaile, it has been extremely incidental to the general treatment of marketing, hasn't it, a general—

44358 A. Was that a statement or a question? I did not quite get the question part of it.

Q. It is a question. I say, where such mention of basing-point practice has been made in textbooks on marketing, such mention has been extremely incidental and general to the subject of marketing?

A. Well, that is a matter of definition of words. I would not say that it was either incidental or extremely incidental. It is an integral part of the discussion of marketing practices and marketing prices.

Q. The treatment, however, was general and incidental, to say the best for it, wasn't it?

A. The treatment is general, I will agree, certainly, in that way.

Q. And incidental to the general discussion of marketing?

A. Well, I suppose one would agree to that in the sense that every specific characteristic of marketing is incidental to the whole. Now, if you mean by "incidental" that it is minor, of minor importance, is considered of minor importance, I would not agree. If you mean "incidental," that it is merely a part of the whole, and that these textbooks are relatively short and must condense and generalize, I will agree.

Q. Now, can you point to any treatment thus made of the basing-point practice in textbooks on marketing that was not in turn, such as the treatment you gave in your writing, based on secondary writing by the authors

44359 of such books?

A. No. I think that is probably true, but I do not know; I would guess that is probably true that the statements in textbooks are based on secondary sources.

Q. You cannot point out to us any instance where it is untrue, can you?

A. No, I cannot.

Q. I believe you stated that you did treat in one such textbook the basing-point practice, yourself?

A. That is correct.

Q. What was the title of that book?

A. The book is "Market Organization."

Q. And what was the date of its publication?

A. 1930, I believe. Either 1929 or 1930.

Q. And as we understood from one of your last answers, the treatment there is based upon secondary material that had come to your attention?

A. That is correct.

Q. Now, as to that publication, you are the sole author?

A. No, I am not. That was joint authorship with Dr. Peter L. Slagsbold.

Q. And as to the mention of basing-point practice therein, you composed that part of the book, did you?

A. To answer that question, I will simply explain how the book was written. I would not say I wrote any
44360 single chapter in it, or that Mr. Slagsbold wrote any single chapter. We both wrote every chapter, and it is a joint product in that sense that we were jointly responsible.

Q. Well, did you compose the portion that is devoted to basing-point practice?

A. In the way that I described. We were both together, and whether I wrote the first draft, and he revised it, and I re-revised it, or whether he wrote the first draft and I revised it and he re-revised it; I don't remember who wrote the first draft but we agreed upon it when it was finished.

Q. You do not think, now, you did write the first draft of it?

A. I have no recollection.

Q. Are there any other writings on basing-point practice that you recall having read, Professor Vaile?

A. No, I think we have covered the list, as far as I can remember at the moment. I might say that I assigned this as a subject for discussion in class every year, and have a fairly long bibliography, but I don't remember it.

Q. Have you assigned for class reading, or for collateral reading by any member of your class, any of Dr. Fetter's writings on basing-point practice?

A. Yes, I have prior to my adoption of the Federal Trade Commission report as required reading, I put in the Willis and Byers book, and then the controversy between
44361 Fetter and others, that followed as required reading, and I have at times assigned almost the entire "Masquerade of Monopoly" as required reading.

Q. Have you read the findings that were made and the order that was issued in the so-called Pittsburgh Plus case?

A. Yes, I have.

Q. Have you at any time assigned any part or all of those as reading in your class?

A. Yes. That case, of course, as you appreciate, was a very voluminous one. Fortunately, for our teaching purposes, the teachers of marketing at Harvard School of Business Administration selected certain excerpts and put them into case books. Those I have assigned quite regularly as required reading. Sometimes I have gone outside of that set of selections and assigned some additional details on the Pittsburgh Plus case.

Q. Do you know whether or not those excerpts in that case include the findings and the order?

A. Yes, my recollection is they do include the order, and considerable portions, but not all, of the findings.

Q. What courses did you teach at the University of Michigan in marketing, or University of Minnesota, in marketing last year, Professor?

A. In marketing we have a course numbered BA-77, the title of which is "Survey of Marketing." I have general charge of that course, and give a series of lectures for a period of 10 or 11 weeks, one lecture a week. I do not
44362 meet the sections the other two days a week. It is split up into sections, and other people have been teaching those sections for the last two or three years. I have a course which is called "Senior Topics in Marketing," which runs through—I take through two quarters of the year. Our year is divided into three quarters, nine months, three quarters, two quarters I have this class of about fifty students, and in the first quarter I deal with matters of market research and market analysis. In the second quarter with matters of market price and market price policy. In the spring quarter last year I had a senior—excuse me, a graduate seminar in market price and market price policy, limited to graduate students. Those, I believe, are the only courses specifically in marketing that I taught at the University of Minnesota last year.

Q. Well, taking a sum total of all your experience in teaching, will you say that it is a fair statement that you have principally and primarily specialized in teaching marketing from the viewpoint of advertising?

A. Oh, no, that would not be a fair statement at all. I do teach, of course, in advertising, it is true, but that is by no means the principal emphasis of my teaching marketing. I would distinguish between the two, and I did not

mention, of course, advertising when you asked me about courses in marketing. That would not be a fair summary of my teaching at Minnesota at all.

44363 Q. Would you say that a principal part, or a substantial part of the writings of yours deal with advertising?

A. A substantial part, again depending on how we are using words—my first published book dealt with the economics of advertising. That was the title of the book. No substantial part, I should say, of the market organization book dealt with advertising. My monographs, I should think, are a very minor part, my series of some dozen or more monographs I have published have dealt with advertising.

Q. Has your teaching in the marketing field of advertising been confined largely to marketing in the retail field?

A. Not largely, no, no. I did at one time teach a course in retailing. I have not done so for some years. We have another man on our staff who handles that field.

Q. Would you say that was prior to 1934?

A. I have to think about history here a little bit. I went to Minnesota in 1923. For the first several years, I should say four or five, three to five, we had no course in retailing. Then I taught the course in retailing for a few years. Then nine years ago we brought a man to the University specifically to take over the retailing, teaching in retailing. I have done very little with that field since about 1931.

Q. But up until then it was the principal part of your—

A. Oh, no? It was never the principal part. It was always a minor part of our marketing work at the

44364 University of Minnesota, still is a minor part, and was a minor part in my teaching and personal interests.

Q. That advertising was a substantial or large part of all of your work?

A. Well, these words again are not specific. I have never taught more than one quarter course—I will take that back. I have never taught more than two one-quarter courses in advertising in any one year, and it is my custom to teach nine one-quarter courses each year in addition to such summer school teaching as I may do, and we have never taught advertising in the summer school at Minnesota, so that out of nine or eleven, which either way you want to count it, whether you include summer school or not,

I have rarely taught more than one course in advertising, and never more than two.

Q. Now, Professor, when did you first come in contact with the Respondents in connection with your retainer in this case?

A. Well, I am very glad to give you that history. I received a letter from Mr. Bond some time in the fall of 1937, asking me if I would be willing to write a memorandum in answer to certain questions that he would submit to me concerning the basing-point method of quoting prices, and if I would be willing to do so at all under what financial arrangement. I replied to him that I would be willing to do it under certain arrangements. I subsequently did so. Following that I got another letter from him, still in the fall of 1937 as I remember it, asking me if I would

44365 be willing to attend a conference in New York City where some of the issues that had been answered by several different people, I was given to understand, could be discussed among those different people. There was some divergence of view, much similarity of view, I gather, and "let's see if we can have a round table discussion of this matter," again what would be the financial remuneration I would want to attend that conference. I told him I would be glad to attend the conference, and did so. Subsequently, some time well along in the spring of 1938, I was asked also by Mr. Bond whether or not I would consider becoming an expert witness in this case on the assumption that they decided to put in some expert economic testimony, and under what conditions I would be willing to do that. I replied that I would be willing to do it, and finally some time, I would think in the early summer of 1938, we entered into an arrangement. I have been working with the legal staff for Respondents since then.

Q. That is, since the summer of 1938?

A. That is correct.

Q. Can you give us the date of this conference that you had in New York in 1937?

A. No, I do not remember the date of it. I do not remember the date of it. As I remember it, it was some time in the fall; it may even have been the late winter of 1938. I do not remember at all.

44366 Q. Can you give us the names of those people who participated in that conference?

Mr. Leisure: Now, I object to that. We are not trying

to find out who the conspirators were now unless the Doctor's testimony shows something more than it has shown so far, I think we are very far afield with that kind of question.

Trial Examiner Norwood: I think so.

Mr. MacIntyre: If Your Honor please, it certainly goes very strongly to the point of the matter in which this witness approached the preparation of his testimony which he has given in this case. I do not see why that would not be relevant and material for the purpose of showing that very fact.

Mr. Leisure: I think it is clear to the Examiner, as it is to me, that the purpose of the question is entirely different from that.

Trial Examiner Norwood: Yes. I do not see how showing who was present at this consultation with these Respondents' lawyers—I do not see how it is going to be of any value in any way whatsoever. If you want to show any undue influence or any undue preparation, you can tell me what you propose to show. Is there any purpose in it whatsoever?

Mr. MacIntyre: Well, it is a matter of evaluation. 44367 I propose to show through answers that the witness can give to questions that I ask along that line, to what extent his testimony here was influenced by views of others who, even prior to the issuance of the complaint in this case, were agents of The Cement Institute for the purpose of defending before the public in any tribunal or out of any tribunal the basing-point practice as used in the cement industry.

Trial Examiner Norwood: You may show that.

Go ahead.

Mr. Leisure: If Your Honor please, I submit that by showing who was at the conference does not tend in any way to bring about any of those answers.

Trial Examiner Norwood: Well, it might.

Mr. Leisure: I do not see, until he has laid some foundation—that is putting the cart before the horse; if he can show that this witness was influenced in some way by this conference, then the conference might become material and relevant, but to just ask him out of the clear sky who attended the conference with his attorneys, without anything more, without any other showing, I submit it is grossly improper, and I object to it.

Mr. MacIntyre: I would thoroughly agree with Mr. Leisure if those statements of his disclosed the state of the record, but they do not. The witness has already
44368 stated that these people had different views, and now I think I am entitled to know whose views they were and what they were.

Trial Examiner Norwood: The Professor can tell us here, I think.

The objection is overruled.

The Witness: The question, then, is what—who was present at this conference?

Trial Examiner Norwood: Yes.

By Mr. MacIntyre:

Q. Yes.

A. Well, I recall Professor Griffin was there. He has already told you that. Professor Cunningham, of M.I.T., was there. Professor—I never can say this name—de-Chazeau; that is not quite right, but at any rate he was there.

Q. Professor deChazeau, formerly of the University of Virginia?

A. That is right, he was there. Professor Clark, of Columbia, was there.

Q. That is the Dr.—

A. J. M. Clark.

Q. J. M. Clark, who has been working with The Cement Institute for a number of years in connection with its Marketing Research Committee?

A. I cannot characterize him that way. I do not
44369 know. Professor J. M. Clark, of the Economics Department of Columbia University, was there.

Q. You do know it is the same Dr. Clark that worked, or did some work for the cement industry previous to your meeting him there; is that correct?

A. That is correct.

Q. Dr. Arthur R. Burns, who was similarly employed by The Cement Institute, was there at that meeting?

A. Dr. Arthur R. Burns, also of Columbia University, was there.

44370 A. I am not sure whether I have given the whole list now or not, but I think I have approximately so.

By Mr. MacIntyre:

Q. Dr. David Friday was there?

A. Oh, yes, Friday was there.

Q. And you recall that he had been doing some work for the Respondents in connection with this case prior to that?

A. I think I did learn that subsequently. I did
44371 not know it at the time.

Q. And Professor Hoover was there?

Mr. Porter: Who?

Mr. MacIntyre: Hoover.

A. I do not recall that he was there. What Professor Hoover, Calvin Hoover, of Duke?

By Mr. MacIntyre:

Q. You did not recall Professor Hoover came into the conference with Dr. Griffin?

A. No, I do not recall it.

Q. I believe you already told us that you ascertained that while the views of these gentlemen who attended that particular conference were similar in some respects, that they were at variance in other respects?

A. Yes, that is true. I have never seen a group of economists together discussing any subject at which that was not true.

Q. And such disagreements as did appear in the views of any of them were discussed at the meeting; is that true?

A. I do not know whether all of such disagreements were discussed or not.

Q. Well, a number were?

A. Some things were discussed on which it was perfectly obvious during the testimony that we had different viewpoints, yes.

Q. Will you name some of those subjects?

44372 A. Yes. I will answer the question this way, that a considerable part of the conference, as I recall it, —and that was a long time ago,—I don't recall all the details, but a considerable part of the conference dealt with definition of terms, and there was some difference of opinion.

By Mr. MacIntyre:

Q. Definition of such terms as "price"?

A. I do not recall that that specific term was discussed, but it may have been.

Q. Elasticity and inelasticity of demand?

A. I am sure there was no difference of opinion as to those two terms.

Q. Competition?

A. I am sure there was no difference of opinion as to competition without adjectives.

Q. Well, what about it with adjectives?

A. Then there was difference of opinion as to the ways in which various adjectives modifying "competition."

Q. For example, price competition?

44373 A. That very well may have been one. Certainly a group of economists, I do not recall for certain, but certainly a group of economists might differ quite widely on that.

Q. And, for example, imperfect competition?

A. I doubt if there was any difference of opinion there, although there may have been. I think there may have been certainly some discussion of what that term meant. I do not believe the differences were very wide.

Q. Surely, Doctor, you can recall some of these items on which there were differences.

A. I was astonished, and I think this was the net result, that we all left the conference that was the degree of agreement that actually existed, that the differences that had appeared were differences in expression, in form of expression rather than in substance, that we were trying to express, and as we sat around the conference table we found that those differences were immaterial and very minor. That is my impression of that conference.

Q. So, it is your recollection now that when you left the conference there was no differences in the opinions of these people in substance or in point?

A. There was none that I was aware of.

Q. And I believe you stated that you were definitely employed by the summer of 1938; that is, a few months after the conference?

44374 A. That would be my recollection, yes.

44378 Q. And you have received from Counsel in this case—that is, Respondents' Counsel—material since your employment for study?

A. They sent me considerable portions, at least, of the testimony of several of the industry witnesses on the case, some of which I read and some of which I did not.

Q. Witnesses that were called as representatives of the industry by Respondents' Counsel?

A. I cannot be certain now whether they were all called that way or whether some of them were called by the Government.

Q. But they were people from the industry, that is, operators in the industry?

A. Yes.

Q. Respondents in this case?

A. Oh, I do not know whether they were all Respondents in the case or not.

Q. Can you name them?

A. What is that?

Q. Can you name those?

44379 A. No, I do not believe I can.

Q. Was one of them Mr. F. M. Coogan, of the Alpha Portland Cement Company?

A. Yes, I believe so.

Q. Mr. John Bowen?

A. I do not remember that name.

Q. Of the Lehigh Company?

Mr. Magee, of the Alpha Portland Cement Company?

A. I have some of his material I am quite sure.

Q. Did you read the cross-examination on those particular witnesses?

A. In some instances the cross-examination, in some instances not.

Q. Did you read all of the direct of those witnesses?

A. No, I did not read all of the direct.

Q. Can you tell us whether or not in reading the direct examination that you followed through with the cross on the particular witness where you did read the direct on the same witness?

A. Not in all cases, but in several cases.

44380 Q. You do recall that Respondents' Counsel showed you considerable data to the effect that it was claimed in the cement industry that there had been numerous deviations from the published prices

44381 quoted by members of the industry; is that correct?

A. I remember some data that went to that point. I cannot remember now whether it was in the form of charts or tables, but I remember having seen some data on that point.

Q. You have defined or have testified a number of times, Professor, in which you have used various terms. One of those has been "price." Will you please again for our benefit at this place in the record give us your definition of price from the viewpoint of the seller? What does price mean to the seller?

A. Price means—price may mean any of several things.

I do not think it is important to set up a single
44382 definition, nor is it possible to set up a single definition unless we do so in quite abstract terms. It seems to me what we have got to do in this discussion is to agree how we are using the term at a moment of time in a particular context. I use "price" in several different ways. Now, if we are talking about the hypotheses set before me in direct testimony, I can answer the question.

Q. Well, let me explain in what manner and in what sense that we want it considered.

A. Yes.

Q. We want it considered in a classical economic sense?

A. In what?

Q. From the viewpoint of the seller.

A. In some sense?

Q. The classical term "price," that is the term "price" as used by the classics in the field of economics; that is, the writings.

A. May I ask you, sir, who you consider the classics in economists?

Q. Well, one of them happens to be Adam Smith.

A. All right. You want it defined, then, in his terms; is that right?

Q. Yes, from the viewpoint of the seller.

A. O. K.

Q. In the abstract, of course, the classical mean-
44383 ing as Adam Smith put it.

A. Price from the viewpoint of the seller in those terms, to Adam Smith, would, I am sure, have meant the amount of money that changed hands in exchange for a unit of goods at the point where the contract between the two parties was effected.

Q. That means that exchanged hands from the buyer to the seller.

A. From the buyer, or his agent, to the seller, or his agents.

Trial Examiner Norwood: Is that the place at delivery?

The Witness: It depends upon the terms of the contract entirely. It depends entirely upon the terms of the contract.

By Mr. MacIntyre:

Q. But it would be that amount of money that the seller received?

A. No, not necessarily; not necessarily. No. I put in "or his agent." Now, his agent may deduct a commission. His agent may deduct a payment to the railroad. We will put the cards on the table. I know what you are talking about here. He may deduct a charge to the landlord who owns the building he is doing business on. The agent may deduct a lot of things before the official legal seller, previous owner of the goods, gets what is left. Now, the price is a thing which—the total that changes hands at the point where the contract is effected, and if it is a
44384 contract that runs in terms of delivered price, then that is the price. If it is a contract that runs in terms f.o.b. freight car price, that is the price. If it is a contract that runs in terms of the commodity somewhere else, that is the price.

44385 Q. Another term that you have used frequently in your testimony has been that of "price competition." Will you please now give us again your definition of that term?

A. If you have the transcript you can read it.

Q. Well, let us see if we understand—

44386 A. Is this an attempt to see whether I can paraphrase a definition I have already given?

Q. No. We want at this point in the record to get your definition of that term so that we will have it in connection with the other discussion to follow.

A. Price competition to me, as an economist, means any change or the threat of any change between the money price paid for a bundle of goods and services and the total quantum of goods and services. It is a change in the ratio between money, on the one hand, and goods and services, on the other, that is involved in a price change, and competition is price competition when it—when the threat that one competitor exercises over the other runs in terms of offering more for the same price or offering the same amount for a lower price.

Q. Now, when you use the word "threat" there, you were talking about potential price competition; are you?

A. Oh, not at all; not at all. I do not know what the word "potential" price competition means.

Q. What do you mean by the word "threat," as you use it?

A. I suppose really what I mean is the fear on the part of the other person rather than the threat on the part of the first person. The fear on the part of one person that somebody else will change this relationship between money and goods.

Q. That is, the fear of something happening in the future, is price competition?

44387 A. That, if you mean by "something" the thing which I have just defined.

Q. That is of someone giving a customer a change that is not given by the person that holds the fear?

A. As long as that fear exists in the minds of sellers, as long as that fear exists in the minds of sellers there is price competition.

Trial Examiner Norwood: Well, doesn't that fear have to affect something before it can be competition?

The Witness: I would say not. If the fear is dissipated by an agreement, then it no longer exists, but if—

Trial Examiner Norwood: If the fear exerted a pressure, that affects—

The Witness: Well, if it is not exerting a pressure I would say it was not a fear. If we are not afraid of it—

Trial Examiner Norwood: Yes. Well, that is what I was trying to verify.

By Mr. MacIntyre:

Q. It is your opinion that if there has been any effect on this fear by agreement, that there would be no fears?

A. Let us not go too fast: "If there had been any effect on it, there would be no fear if there had been any effect on it." The fear might of course have been either

44388 intensified or lessened; if there had been a certain effect on it by agreement, then it would disappear entirely. That is only one of the possible effects of the agreement upon that fear. Now, a certain agreement, I will agree, that is what I mean to imply, would eliminate price competition.

44389 Q. When we recessed I believe we were talking about the term "price competition."

Is it your testimony that price competition includes all forms of competition?

A. No, that was not my testimony.

Q. What form of competition is not included in your definition of "price competition"?

A. Those forms of rivalry in and at the market, the purpose of which is to shift the total demand schedule, I exclude from price competition; that is to say, when there is an effort to change the fundamental relationships between money and goods in the demand schedule.

Other forms of competition involve the attempt to get patronage through the change in the amount offered at a price, or the price at which a fixed bill of goods is offered, one or the other, change between the unit of sale and the price, that is price competition. But the rivalry that
44390 is directed to the expansion of the entire market is non-price competition, the effort being to sell a greater amount at the same price.

Q. For example, one company adding salesmen to its force for solicitation?

A. If in adding salesmen to the force they are entering new territories, widening the market in that way, but not changing price or the commodity, that I should say would be a matter of—no. Even that may very well be, and in all likelihood is, purely price competition. The thing that is non-price competition is where you are attempting to increase the demand schedule for the commodity, whatever commodity you are talking about.

Trial Examiner Norwood: In competition with another industry.

The Witness: In competition with another industry, yes.

Trial Examiner Norwood: Everything else would be price competition.

The Witness: I should say that was essentially so.

By Mr. MacIntyre:

Q. In one example the price competition as you defined it is the action of one company, that is, one producer increasing his sales force to solicit orders, while the other—

A. I will give an illustration that perhaps will cover the point.

The California Fruit Growers Exchange as a
44391 single sales agency undertook a number of years ago to increase the consumption of oranges. Now,

they recognized perfectly well that the consumption of Florida oranges would increase as a result of their campaign if their campaign were successful. They were trying to increase the willingness of people to either accept oranges at a price or to accept more—oranges at the present price or to accept more quantities of oranges at a higher price. And what they were trying to do was to get people to buy oranges at the same price. Now, that, I say, is non-price competition. That is an effort to expand the market, quite regardless of whether you increase your share in the market or not. Florida might sell the same share that it sold before. If that campaign had expanded the market of oranges as a whole, it would have been a successful campaign.

Q. That is non-price competition as you view it in contrast with the effort of one, say, cement manufacturer to increase its share in the market at the same price quoted by its competitor through adding an additional salesman?

A. Through—if they are merely trying to change patronage from one company to another by convincing the buyer, the prospective buyer, that they get more for their money—you see, more for your money is involved in price competition—by convincing them that they get more for their money when buying this brand of cement than in buying another brand. That is price competition—more for your money. If you want people to eat more
44392 oranges, get more people interested in the fact that oranges are supposedly healthful, and all that sort of thing. That is non-price competition. But the attempt to get patronage on the claim of more for your money is price competition.

Q. Well, now, assume that this cement company just added another salesman, and he visited the customers, acting more or less as an order taker, and merely represented that his cement that he was offering to sell was as good as the other man's at the same price and he would like to get the order. Does the addition to the sales force of that cement company represent an effort in price competition as you view it?

A. Yes, because it increases the potential supply of cement in that market, and that increase in supply, unless something else happens, you see, is bound to force the price down.

Q. Even though it was being offered at the same price as the other?

A. It would not be taken unless there is one of two things, a shift in the anticipated value, the exchange for money, or an increase in the demand.

Q. Now, assume that this is not a new market but an old market where salesmen were already soliciting rather than creating a new demand. Would it still be price competition as you view it?

A. Certainly. It seems to me perfectly consistent with what I said.

44393 Q. The only thing that would not be price competition would be an effort toward increasing the total demand for the product?

A. That is right: demand as an economist defines demand.

Q. All other things being price competition?

A. That is correct; which is all of the things.

Q. All of the sales activities?

A. All of their activities. All other positive efforts of market rivalry; yes.

Q. Now, Professor, assume that "A," "B," "C," "D," and "E" operate filling stations in a particular section of the city within view of each other; that they offer and sell gasoline of a standard brand, that is, standardized as to specifications, at least—

A. Just a moment. They all offer the same brand?

Q. The same brand, which is standardized as to minimum specifications.

A. They are all selling Red Crown. O. K.

Q. Carrying the same specifications.

A. No. Let us be sure that our minds meet on that. I do not care what the specifications are, if the brand offered by each of these filling stations is the same so that the consumer assumes it is an identical product. Is that right?

Q. Call it Red Crown. That is all I know about it. It is Red Crown. It meets certain minimum specifications

44394 that Red Crown meets.

A. O. K.

Q. That they offer to sell this and various services along with it, free air, or inflating tires, cleaning windshields,—the usual services around a filling station,—and after trying independent action for a while "A," "B,"

"C," "D," and "E" meet and agree that they will charge 18 cents per gallon for the gasoline. They do not agree at all on any of the services that they are to render in connection with these sales. In fact, "A" instructs his salesmen, after filling up the tank with gas, to use an oil rag in cleaning off the car to make it shine; the others do not. "B" instructs his salesmen to wipe the headlights as well as the windshield; the others do not. In other words, there are real differences, valuable differences, in the services that are rendered as between "A," "B," "C," "D," and "E," but they have agreed on the price of 18 cents per gallon that they quote and charge, and they do charge it as agreed upon. Is there price competition existing in that situation under your definition and in your view?

A. I should say that where there is agreement there is no competition.

Q. They do not agree on anything except this one item.

A. Then, under those circumstances there is no more reduction in competition than as though they had agreed on the standardization of the product. In the one case they standardized the price and let the product vary; 44395 in the other they standardized the product and let the price vary. I say those two situations are analogous. And there is just as much opportunity for competition in the case where they have agreed upon price but let the quality of the product vary as there is where they have agreed upon a quality of the product and let the price vary.

Q. That is, you say, just as much competition. You mean price competition?

A. Price competition, which is the relationship between the commodity and the dollar.

Q. Will you agree that there has been in that situation a substantial restraint placed upon price competition?

A. I would not, unless you want to say that there is a substantial restraint placed upon competition when you standardize the product. The standardization of price with the product left unstandardized exercises no more restraint than the standardization of the product when the price is permitted to vary.

Q. Well, you used the word "if" there. I am asking you, just assume the situation that I have given and tell me whether or not that there has been substantial restraint upon price competition.

A. I would say not.

Q. There has been no restraint upon price com-
44396 petition as you view it in that situation?

A. If the assumptions which you have put before me hold, there is no restraint on price competition.

Trial Examiner Norwood: In other words, if there is variation on the one side or the other, on the quality or quantity side, or on the money side, then there is competition.

The Witness: That is correct. That is exactly my position, Your Honor.

Trial Examiner Norwood: Now, suppose, then, that they had agreed on the other end of it, too, then that would show the absence of competition?

The Witness: Yes. If you cannot vary the relationship between price and commodity, then you have eliminated competition.

Trial Examiner Norwood: Well, how much does it take to restrain trade? If you have just agreed on the price and on the windshield wiping, would that restrain trade?

The Witness: Well, the crux of the matter seems to me to be in part of the assumption that was put before me, namely, the valuableness of these things that were left free to vary. Mr. MacIntyre's question said that they are valuable things left to vary. When valuable things are left to vary to the full extent of the valuableness of those
things, you can vary your relationship between
44397 price and commodity.

Trial Examiner Norwood: Does that mean degree of restraint?

The Witness: If—yes, certainly. If you have agreed on all but minor characteristics which are not valuable, then I should say you have exercised a considerable restraint upon competition.

Trial Examiner Norwood: Almost total there.

The Witness: Almost total, yes.

Trial Examiner Norwood: That would be a degree of restraint.

The Witness: That is correct.

Trial Examiner Norwood: Then, this even agreeing on one point would be to a slight degree—

The Witness: I think—

Trial Examiner Norwood: —tendency to restraint. Would it or would it not?

The Witness: I think that does not necessarily follow. I do not conceive of a standardization of commodity as restraining competition. On the opposite side, I do not conceive of a standardization of price by itself with perfect freedom to change quality as restraining competition.

44398 Q. Professor, keeping in mind the circumstances involved in the marketing of cement as have been outlined to you in these various hypothetical questions—

A. Just a moment at that point. As I pointed out late this morning, there is some contradiction between the assumptions in Mr. Wooden's hypotheses and in the hypotheses on the other side. Now, are you trying to put them all together?

Q. The sum total of the hypotheses put to you by the Respondents.

A. The Respondents. All right.

Q. Now, taking those into consideration, would you say that price, that is, the monetary sum that is involved that is passing from the buyer for what he gets in his purchase of cement is of considerable economic significance to the buyer?

A. The amount that passes from the buyer is of significance to the buyer. Of course it is.

By Mr. MacIntyre:

Q. It is very important economically speaking; is that true?

A. Oh, yes. Yes.

44399 Q. Would you say that it is probably the most important thing in his mind?

A. No. No, I would not at all say it is the most important thing in his mind. The most important thing in his mind is what he gets.

Q. Well, on one side of the equation. But on his side of the equation is the monetary sum that he pays for what he receives regarded by him as, I will say, the most outstanding thing of importance in his mind.

A. I do not know whether you are getting me over into psychology or what you are doing here. But when I make a purchase I am concerned with what I get, even more than I am concerned with what I pay, even though it hurts to pay.

44408 Q. Now, you have used another term in your testimony, that of "imperfect competition." Do you recall?

A. Yes.

Q. And I believe you have characterized the cement industry, which was presented to you in these hypothetical questions, as one which engaged in imperfect competition.

A. Yes.

Q. Is that correct?

A. That is correct.

44409 I do not want to quibble over words,—engaged in imperfect competition. I should say the conditions of imperfect competition obtaining in the cement industry.

Q. And I believe you stated that one of the conditions which made up this condition of imperfect competition was the small number of sellers—

A. That is right.

Q. —involved.

A. That is right.

Q. And is it your testimony that the smaller the number becomes the more imperfect competition the condition becomes?

A. No. I have not so testified.

Q. Why wouldn't it become more imperfect as a matter of competition with other things remaining equal?

A. With other things remaining equal, yes.

There is a lack certainly of mathematical continuity in that particular phenomenon and its effect upon the competitive situation. We have certain almost, if not completely, discrete situations. We have numbers large enough so that the individuals do not believe, or do not suspect, do not anticipate that the other individuals will act in a certain way as a result of their action. We come to a point where, because of the—perhaps because of the nature of the people engaged in the industry, their industrial maturity and judgment, their experience in the past, or some other reason, a fairly large number might operate.

44410 with the sort of restraint that both Professor Griffin and I have been talking about, recognizing clearly that the people against whom they are competing will retaliate in certain other definite ways,—if they lower price, for example.

Now, once you have reached that point, then the shrinking of the number for a considerable period would make no important difference, it seems to me. In that sense it is not fair to say that we have a continuous curve of increas-

ing imperfection as we lessen the number of opera-
44411 tors.

Q. What is this number that would be necessary, with all other things remaining equal, for you to move from imperfect to perfect competition?

A. You can't have perfect competition in a finite world. Now, I thought I made that perfectly clear, that we have found no way by which we can get perfect competition in this world, any more than the physicists have yet been able to get to absolute zero. Maybe they will some day.

44412 Q. But as a characteristic of competition, you mean to say that it is something short of monopoly.

A. Have you gone back now to the basic term "imperfect competition" or are you still talking about this one characteristic of imperfect competition?

Q. I am talking about—

A. Number of sellers?

Q. —the basic term.

A. The basic term. Imperfect competition is not monopoly.

Q. It is something considerably short of monopoly?

A. That depends. It depends in what sense it is imperfect.

Q. Well, in the sense you have been using it here.

A. I tried to point out in my direct testimony the different elements that enter into imperfect competition,—number of sellers, divisibility, homogeneity of product—they are all in my definition of "imperfect competition."

Now, to what are you directing this particular ques-
44413 tion?

Q. Well, the sum total of those, as you have understood them here, and the manner in which you used the term "imperfect competition," is it something, in your consideration of all these factors, that falls considerably short of monopoly?

A. Well, my dear sir, you have five variables, and you have a wide range of possible combinations and permutations. Now, those various combinations and permutations with these five variables, the range of possibility in each of them is legion.

Q. Well, we appreciate that.

You considered the range of all of those circumstances in answer to Mr. Leisure's hypothetical question, and now

I am asking you that, in your consideration of all of those and your use of the term "imperfect competition" in connection therewith, does it or does it not fall considerably short,—that is, does it or does it not describe a condition that falls considerably short of being perfect monopoly?

A. It may or it may not.

Trial Examiner Norwood: Is this imperfection a variable quality?

The Witness: Why, certainly, sir. That is what I tried to imply when I said you have got all these combinations and permutations of characteristics.

Trial Examiner Norwood: Will they vary more or less directly with the elimination of each instrument of 44414 competition—

The Witness: With the elimination—

Trial Examiner Norwood: —such as price, service, and so on?

The Witness: Well, I think this is probably the best answer I can give to this question:

One of the very common ways in which sellers undertake to compete under conditions of imperfect competition is through increasing the lack of homogeneity of product. Now, as they are successful in increasing the lack of homogeneity of product, as they convince you and me that we are willing to pay more for one brand of a product than we are for another, as that thing gets real, and the amount more increases to considerable amounts, we get further away from the results of perfect competition. Now, if the amount more than you or I have been convinced we will pay for the one brand of commodity than for another remains very small, if there is just a slight rise in price, we will change brands, then the effect of that attempts to develop imperfection has not been carried very far, and while the imperfection exists it is not highly important.

44417 Washington, D. C.,
Monday, September 23, 1940.

44418 ROLAND S. VAILE thereupon resumed the stand and testified further as follows:

44421 *Cross-Examination (Continued)*
By Mr. MacIntyre.

Q. Professor Vaile, in the answers you have given in response to Mr. Leisure's hypothetical question, you have taken into account all assumptions stated therein, and nothing else; that is, your answers were based on all of the assumptions stated in those hypothetical questions and no other circumstances; is that correct?

A. That is correct.

Q. Now, to come back for a moment to a matter that we had up Friday afternoon, this matter of definition of

44422 "price," do you agree that "price" is that amount,—that is, in the cement industry,—is that amount which is retained by the seller, the cement manufacturer, after freight, other such items, have been paid?

A. Well, of course, it depends entirely upon whether you are talking about price as a legal concept, the result of a contract, or a price bargain that has been stated in definite terms; or whether you are talking about price as something that directs economic activity. I use the term "price", unless it is specifically stated otherwise, I use the term "price" in relation to an agreed-upon bargain, whether that be in the form of a legal contract or not, and so I would not—I would answer your question by saying that I do not think of "price" in the cement industry as described in the hypotheses as the amount that the seller retains after certain things are subtracted because it seems to me, if I understand the hypotheses correctly, that is not the total terms of the bargain.

44423 Q. Well, do we understand you say now that in your concept is not "price," that is, the mill net under the circumstances in the cement industry, as you understand them?

A. If I understand the circumstances correctly, it certainly is not "price" in the sense of a legal contract, "price," of an agreed-upon market price.

Q. Well, of course, Professor, I am not asking now for your legal determination as to what is and what is not "price." I am asking you for an answer from an economist's point of view under the circumstances you understand to have prevailed, and that is to have prevailed in the cement industry.

A. I do not think the mill net is a price in this industry, as described.

Q. From the standpoint of an economist?

44424 A. From the standpoint of anyone.

Q. But looking at it from the viewpoint of the seller.

A. The viewpoint of whom?

Q. The seller.

A. I do not care whose viewpoint you are looking at it from.

Q. Professor, I am going to read a statement to you from your book, "Market Organization," page 166, in which you, in referring to the manufacturers the seller, in the Portland cement industry, made this statement:

"If your two mills are located at 'A' and 'B' respectively, the price of cement at 'C' will be the price at 'A' plus the freight from 'A' to 'C,' while at 'D' it will be the price at 'B' plus the freight from 'B' to 'D.' If 'A' enters the 'D' market, as he is likely to do, he quotes 'B's' price plus the freight from 'B' to 'D.' This means he nets a smaller 'mill net' there, i. e., the price actually retained by the shipper after paying the freight for his product sold in 'D,' than for that portion sold in 'C,' because he actually pays the railroad a higher freight rate than he charges the buyer."

You recognize that as a statement you made in the book that I referred to?

A. Yes, sir; that is correct.

44435 Q. Professor, assume that in the cement industry, which has been described to you here, and in which you have been testifying, less than 100 sellers operate, and that they establish or name to the buyers a price to their own liking, and not one which is bargained for by the buyers, and that sales are made at the price thus set or established by the sellers, is that a condition of imperfect competition?

A. Well, you still haven't answered my question, Mr.

MacIntyre, as to whether or not there is any collusion in the naming of this price, or whether each seller is operating independently and simply saying, "Here, here is my product at $2, take it or leave it." If you can answer that simple question I will be glad to discuss the question.

Trial Examiner Norwood: Would that really make any difference as to whether or not there is a competitive condition there, Doctor? Do you have to know that distinction before answering this question?

The Witness: Well, I think it would be much more helpful to the Examiner and the Commission if we could get that distinction.

Trial Examiner Norwood: I think you might answer the question as it is, and then we can clarify it by assuming the other condition.

44436 The Witness: Well, I would say this, that lacking any legal restraint on the part of the buyer, I cannot see how you can prevent him from bargaining; that is to say, he will say "Sure, I won't take your stuff at $2, but I will give you $1.90." Now, it is the privilege of the seller to accept or not to accept that bid, but I do not quite see how you are going to prevent the buyer making that bid.

Trial Examiner Norwood: He is assuming that you can prevent it, then what?

The Witness: But the sellers can't prevent his making that bid. That must be Government prevention.

Trial Examiner Norwood: Can you answer that question by making that assumption?

The Witness: I very strongly hesitate, Your Honor, answering questions based on assumptions that cannot be worked out, cannot be made realistic, and I do not see how, unless you have Government action in this thing, how you can prevent a buyer making an offer.

By Mr. MacIntyre:

Q. Professor, it is not the question of the buyer making the offer, it is the question that I assumed of a seller—that is of the sellers holding out and securing from that buyer a particular price irrespective of any offer that the buyer has made.

44437 A. Well, that is the essence of competition, I should say. I do not say that there is any reduction of competition in the situation.

Q. I am asking you if the conditions I put forward in the assumed state of facts presents a condition of imperfect competition.

A. No.

Q. In other words, a small number of sellers there, naming a price from which they would not budge, even though they received different offers from the sale, does not, in your mind, prevent a condition of imperfect competition?

A. I am glad you restated it because the small number of sellers is always imperfect competition.

Q. Under the conditions I described?

A. The other conditions have no influence in the matter; that is the point I want to make clear. There is imperfect competition due to the small number of sellers, and the other conditions you have stated seems to me to have no bearing on the matter.

44438 Q. I would like to read to you a statement here, Professor:

"Prices may be set by competitive bidding of buyers and sellers, each having about equal bargaining advantage. For example, in the organized exchanges, bargaining continues until a single price establishes a definite equation of supply and demand. All sales at that moment are then made at the established price. If the price seems either too high or too low to some traders, they offer to buy or to sell sufficient quantities to force the price into line. Such markets may be called competitive price markets.

"Established price markets are the other general class of markets on the basis of methods of price de-
44439 termination. Such markets again fall into three general classes.

"Price established by bargaining between groups of sellers and groups of buyers. In such cases, prices are usually established for a definite period of time, one or more months, or in cases even longer. For example, in many large cities representatives of producers and distributors of milk meet periodically for the purpose of establishing the price of milk for the ensuing period, three months or whatever the period agreed upon.

"Price established by sellers. Prices of many indus-

trial products, such as oil, steel, and others, are commonly said to be so determined."

Do you agree that that is a writing of yours in explanation of the different methods of arriving at markets and market prices?

A. I do, but you will bear in mind that the term "imperfect competition" is not referred to in that.

Q. Had you at the time that you had written that statement seen in print anywhere the words "imperfect competition," as describing a condition prevailing in the cement industry?

A. I cannot answer that question. I do not know.

Q. And there had been few places that you had seen it prior to the time you wrote this statement?

A. There had been what?

Q. Few places that you had seen that term used; 44440 is that correct?

A. I expect that is correct, although there had been many more places where I had heard it used.

Q. What, if anything, can you tell us now that distinguishes in your mind the steel industry referred to in that statement I just read to you from the cement industry, in the matter of establishment of prices in a market?

A. Well, that becomes pretty nearly a factual question, and I have the impression that the steel industry is a large, more diverse industry in the type of product that results from it, and in the variation of specialized machinery that is necessary and the lines of products for which prices are determined, and the degree to which the products of the steel industry approach finished product, some fundamental differences there. There also are some fundamental differences at the point of production of the original raw material, there being a greater concentration geographically of production of iron ore than of the raw materials for cement, and there being—I believe—this is factual matter, I may be wrong on several of these points—but this, I believe, is essentially correct: I believe that there is less complete integration of ownership of bodies of ore and steel plants than there is bodies of the crude materials going into cement and the cement plants.

Q. Well, now Professor, you would agree that the ce-

ment industry, as described to you here, falls with-
44441 in the classification of the price markets established by sellers, such as is outlined in that statement that I read to you; would you?

A. Yes, I should say that as outlined in that very elementary and brief summary statement, the cement industry belongs with that group.

Q. And would you say that these factors of lack of standardization in the steel industry which you have just related are factors that would make less for a condition of imperfect competition than is the case of such single product conforming to minimum specifications in the cement industry would make for such conditions?

A. No, I think you have a high number of circumstances in both industries that make for imperfect competition.

Q. Well, I am asking you whether or not that those factors that you just related as applying to the steel industry would make less for the condition of imperfect competition?

A. I do not believe they would.

Q. Would you agree that in an industry such as the cement industry, where all the capital costs and high overhead costs were said by Mr. Leisure to exist, would force any business man or seller out of that industry until competition became keen; that is, any inefficient business man or seller out of that industry until competition had become keen?

A. Well, of course, a monopolist may go out of
44442 business if he has certain costs that cannot be covered by the desire of the people for his product and their willingness to pay for it; consequently, even under conditions of monopoly people may be forced out of business because of economic conditions in the market respecting that particular product or series of products, and so it is not a universal that competition has to be keen to force people out of business. Now, I am not sure that meets head on your question.

Q. It would be one of the principal contributing factors, however, in ridding society of high cost inefficient units in an industry?

A. Well, competition has a lot of effects at that point. I stated earlier that one of the expectations which the

economists hold for competition is that it will lead to improvements in the industry, engineering improvements, reduction of costs. If competition has that effect, and you have plants which call for high investment and long-time use before they are physically worn out, the effect of competition is to bring out obsolescence and to force firms out of business. Now, you have another case that I also have referred to before where it is easy to get into business, in the grocery retailing, and there without any material improvement in the way in which the business is done you may get people entering the business because they think they can make a success of it. They lose what little capital they put into it and drift out of the business
44443 rather rapidly. I do not know whether you call that keenness of competition or lack of intelligence in entering the business. I am inclined to personally explain it in the latter terms, that it is lack of intelligence in entering the business that causes them to fail in the business.

Q. But you do agree that the public is compelled to rely chiefly upon competition in an industry to remove high cost inefficient plants from the industry?

A. That is a very hard question to answer factually.

Q. No, I am not asking for a factual answer. I am asking for an answer now to the question with you viewing the question as an economist on principles.

A. If you define "competition" broadly enough, I should say yes, but that would include inter-industry competition as a force. I said it was a hard question to answer factually because after all the economist tests all of his principles by fact, and if they do not agree, one or the other must be wrong; that is the position certainly of the scientific economist. Now, as the figures come to my attention there was a period from the early '90's to the beginning of the World War in 1913, or 1914, during which the price of many steel products, omitting steel rails, or a price of all steel products, including steel rails, on the average, was going down relative to the general price level, and yet it was said during that period that competition was not too keen in the steel industry. Now,
44444 if I accept that latter statement as a reasonable expression of fact, then I find that one of the greatest periods of one of the greatest industries from the standpoint of improvement during that period was an industry not subject to what I assume you mean when you

say "keen competition," unless you broaden the concept to include inter-industry competition.

Q. Well, on page 44304, line 17, you testified that an industry assumed to be engaging in free competition would be one in the public interest. You would say that one which did not present a condition of competition would not be in the public interest, would you?

Mr. Leisure: Now, I assume that what the Professor said was that free competition was in the public interest, and I ask permission to show him his answer at page 44304.

Trial Examiner Norwood: Yes, you may.

(Mr. Leisure hands transcript to the witness.)

A. You see, Mr. MacIntyre, I was asked to assume that free competition was in the public interest. I do not believe that I anywhere testified that free competition was in the public interest. I testified about something else on the assumption that free competition was in the public interest.

By Mr. MacIntyre:

Q. What is your testimony now,—is competition in the public interest, or is it not?

A. I made an answer, or presumption which I 44445 think covers this case very definitely. I cannot as an economist, I certainly cannot answer that question unless you tell me what specific objective you are considering as being in the public interest. As an economist I cannot determine objectives. Now, if you will tell me an objective that has been decided to be in the public interest, or that you want me to assume is in the public interest, then I can answer whether or not competition tends toward that objective.

Q. Well, let us think of it from the objective of national economy and the public generally.

A. That is not quite precise enough. What do you mean by "national economy" and the "public generally"?

Q. Thinking about the interests of the entire community rather than the few sellers in an industry in which you say on your direct examination would be motivated by self-interest.

A. Well, you see, you are adding together certain things which ~~must have~~ different denominators.

Trial Examiner Norwood: Well, could you consider it from the objective of reasonable profits and fair prices?

The Witness: If you assumed that—if you ask me to assume that—

Trial Examiner Norwood: And that would be in the public interest?

The Witness: —that that is in the public interest?

Trial Examiner Norwood: Yes.

44446 The Witness: I have stated that the economist feels that competition tends to bring marginal costs equal to average total costs at the point where average total costs are at a minimum. Now, if that is thought to be in the public interest, then competition, other things being equal, is in the public interest.

By Mr. MacIntyre:

Q. Well, do you think that the first of those two things is in the public interest?

A. That I cannot answer, sir, because you must give me a specific part of the public interest. I used the illustration the other day, which I shall repeat, that some of us may consider equal distribution of income as being in the public interest, others may consider an unequal distribution of income is in the public interest. Now, there are lots of other questions like that, but I must know what particular thing you are talking about in attempting to measure the effect of something else upon, and what you have decided I should assume is in the public interest with respect to that result before I can answer whether a specific part of our marketing machinery is in the public interest or not.

Q. And you cannot tell us at this point whether or not competition, just looking at it in the abstract as an economist, is something that is in the public interest?

A. Well, I would say this, that experience in this 44447 country and elsewhere has pretty definitely proven, it seems to me, that competition as a universal is not always in the public interest.

Q. Well, what about generally?

A. Well, what do you mean by "generally"? You have got to be specific in this thing. There are interests where competition, it has been decided quite definitely, is not in the public interest.

Q. Well, aren't you now speaking when you say "some instances" of things such as railroads and public utilities? Let us think of it from a standpoint of industry generally in America.

A. Well, you have mentioned some industries that are pretty big industries. You take all of those which we think competition is not in the public interest, we have taken a good many, and they bulk pretty large.

Q. Well, what about one like cement, let us get down to some specific example. Would you say that competition in the cement industry would be in the public interest?

A. You know, I am not at all sure that it would; I am not at all sure that it would. I think that we have here an industry which from the standpoint—this is purely personal opinion; you understand it runs to factual material; it is not my opinion as an economist but as a citizen—I think it might quite well be in the public interest, speaking as an individual, to have this industry taken over by Government,—entirely possible.

44448 Q. Let us forget for a moment your opinion as just a citizen, as one individual, and get your opinion as an economist. You have been testifying here on direct as an economist, so on cross let us get your opinion as an economist on that point, whether you believe that competition in the cement industry is in the public interest.

A. I cannot answer that question until you tell me what part of the public interest you are talking about.

Q. Well, looking at it from the objective of getting a proper, a fair price level to the public, that is the buyers.

A. Well, I have got to put that in terms of an economist. If you mean by getting the total cost of cement at point of use down as low as it will go under our present engineering knowledge, I think probably competition would do a fairly good job, but as I said a moment ago I think it may be that this is a type of industry with your assumptions of geographic distribution different from the geographic distribution of market, and with high overhead costs, it may quite well be that if people would act rationally we could reduce the human effort used in the manufacture and transportation of cement, if we made the cement industry non-competitive and handled it as a Government industry, I think it is entirely possible that that would be true. Now, whether or not, therefore, competition is desirable in this industry depends upon whether that is your final and absolute test, or whether you want American business to

44449 be carried out in the main by individual free enterprise rather than by Government edict, and whether now, that becomes a matter of public interest which I

cannot and will not discuss unless you make a definite assumption for me to talk to.

Q. And if you say that you assume that the latter is the desire—

A. Will you please state, "the latter," just what do you mean?

Q. Is something that Americans "would lead, or maintain and preserve free enterprise," assuming that to be the objective you would say that competition in the cement industry would be a thing that would be desired?

A. Oh, that seems to me to be almost a truism, if we believe competition is a good thing, we want competition here, yes.

Trial Examiner Norwood: We will take five minutes' recess.

(There was a short recess taken.)

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. Professor, you used, and so has Mr. Leisure in putting to you certain assumptions, the term "elasticity of demand" and the term "inelasticity of demand."

Now, I would like to read you a definition, a statement bearing on those terms:

"The degree of change in consumption that ac-
44450 companies a change in price of a particular commodity is spoken of as the elasticity of demand for the product. If the—

Trial Examiner Norwood: Wait a minute. Read that again. "The degree of change"—

(Mr. MacIntyre read the statement again.)

By Mr. MacIntyre:

Q. (Continuing.) "If the percentage of change in quantity purchased is greater than the percentage of change in price, the demand is said to be elastic; if the quantity change is small relative to the price change, the demand is called an inelastic one."

Do you agree with that definition of the terms "elastic" and "inelastic" as applying to demand?

A. I do.

44453 Q. While we are on this question of demand, I would like to read to you a further statement:

"A rise in price discourages consumption, on the one hand, and encourages production, on the other. A fall in price has the opposite effects."

As an economic principle, do you agree with that statement?

A. Yes.

I call attention to the fact that that is not a defini-
44454 tion of "demand," but it is—

Q. No. It is a statement of a principle.

A. I am not sure that it is a statement of a principle. It is a statement of cause and effect relationships. If that is what you mean by "principle," yes.

I would add—this question has not been asked—I would add one further comment on that point. I think the sentence as read did not refer to time. This tendency that is discussed in the sentence quoted assumes either no passage of time or a finite period of time in which other things than the price movement referred to in the sentence have not changed.

Q. Now, on your direct when you were talking about factors that made for elasticity and inelasticity of demand, you gave an example, the use of pig iron in the manufacture of steel watch springs, and observed that the change in the demand for watch springs would have a more appreciable effect on demand for pig iron. Do you recall?

A. I do.

Q. Professor, don't you consider that that is a rather extreme example to make that point?

A. Well, I used it purposely to make the point.
44458 Q. The finished product in such a situation, the demand, in your opinion as an economist, would not be affected at all?

A. Well, of course, this is what we are quibbling about, if quibbling you call it. The sales—as the price rises, other things being equal, the price of substitutes not rising, the sales will fall off. But that is not a falling off of demand.

Now, let us use our terms so that we are thoroughly appreciative of what they mean. You can't define nor grasp the concept we have previously been talking about, namely, elasticity of demand, without first grasping the concept of demand itself.

44459 Now, demand for a product at a moment of time runs in terms of a series of conditional statements: At price "1" quality "A" will be consumed; at price "2" quantity "B" will be consumed, at price "3" quantity "C" will be consumed, and so on. And as price rises,

the law of demand says the quantity that will be consumed falls. Now, the mere fact that the price of a commodity rises has not changed the demand situation. It has changed the point of sales, but not the demand.

44463 Q. Is it your testimony that as an economic principle the seller—keep that in mind—the seller in making that decision will separate his markets, charge different prices to those different buyers in those separated markets to the point where he will share his nearby markets with competitors that are distantly located? That is, is it your testimony that the seller in that instance will to that degree disregard the economic principle of indifference in price?

A. I do not know just how a person shares a nearby market with someone else, or fails to share it. That is the thing that bothers me in your question. How is he going to keep the other person out of the nearby market?

Q. Well, let us forget the whys and wherefores, Professor.

Mr. Bond: May the witness finish his answer?

The Witness: I finished it with a question. I have asked Counsel to answer that question.

By Mr. MacIntyre:

Q. Let us forget the whys and wherefores and use the term "sharing" in its usual sense there. Apply the situation to that of pricing a commodity such as cement.

44464 A. Well, in the first place, I am not satisfied with the answer, "use 'sharing' in the usual sense." I asked you what sense you were using it in. It does not seem to me that is an answer, because I do not know what you mean by the usual sense. And quite frankly and very sincerely, I do not quite see what you are getting at when you ask whether or not as a matter of principle a nearby seller will share his market with somebody else. If he wants to sell in that market, I do not for the life of me see how he is going to prevent him from coming into that market.

44465 The Witness: You see, there are two questions here. The last, about indifference in price, is quite separate from the other. The first, the sharing of the market, of course, it is very commonplace. It is almost universal in all industries with which I am familiar.

A department store in Minneapolis delivers in St. Paul with a higher delivery cost than the St. Paul store with

which it is competing, and this gets a lower net return. It is the commonplace method of doing business in America.

And then you ask me do I really believe that they will do this thing. The fact is—

Trial Examiner Norwood: Wait a minute, Doctor. That sharing is referred to as a result of a certain price policy about which your opinion was asked.

The Witness: Well, I am saying—

Trial Examiner Norwood: It occurs to me that "sharing" permits somebody to get a part as a result of that policy. Do you understand it?

The Witness: I do.

Trial Examiner Norwood: Well, can you answer the question, then, from that standpoint?

The Witness: Well, from that standpoint it seems
44466 to me it is the commonplace method of American business. Everybody does it.

Now, is that a satisfactory answer? That is my answer.

By Mr. MacIntyre:

Q. You do not believe, then, Professor, that the theory, that is, the economic theory of price indifference applies to sellers as you have so ably described it as applying to buyers here in the last few minutes?

A. I have not defined a theory of economic indifference to sellers. If you would say just what you have in mind, I will be glad to answer the question.

Q. Well, you have described it—

A. Do you mean that under no conditions will a seller sell for a smaller net return to himself than under other conditions? Is that what you mean?

Q. Where if he did so he would be surrendering as a price policy a part of his nearby business to distant competitors.

A. Well, my only answer to that is it is the commonplace of American business.

Q. It is your testimony, then, that that economic principle does not apply to sellers as you have described its application to buyers?

A. That is not quite my testimony, because I have not set it up as an economic principle.

44467 Q. Well, isn't it one?

A. I do not think so, under typical American conditions, that sellers will sell all things at an exactly similar net return to themselves.

For example, let us carry the thing a step further and make perfectly clear my point. Here is a manufacturer who is making not one product but several.

Q. But we are talking about cement, Professor.

A. Oh, I beg your pardon. You were not talking about cement. You were asking me a generalization.

You have here a manufacturer who makes a half dozen products. Now, I should say that there is nothing in my study of manufacturers' pricing policy to bear out any supposition that in pricing those half dozen products they will price them so that each of them gives them the same net return. They may get widely different net returns from them, depending upon the situation that faces them in connection with each other.

Q. Well, Professor, I want you to clearly understand that I am attempting to do now just as Mr. Leisure did on direct examination; that is, to secure from you answers in the abstract based on economic theory as you understand it, and not upon some particular example that you have noted in some particular locality and some particular industry. We want to get now expert economic opinion based upon economic principle. And so I wanted you to answer, when I asked the last question, from that viewpoint, rather than going off on a tangent as to the 44468 operation of two department stores in St. Paul and Minneapolis. Give it to us on pure economic principle and theory, and that only, if you please.

Mr. Leisure: Now, if Your Honor please, I object to this lecture that is being given the witness. I think the witness was asked the question in the abstract, and he answered, and he cited certain examples.

Trial Examiner Norwood: Yes.

Mr. Leisure: I think the lecture—

Trial Examiner Norwood: Proceed to question the witness.

By Mr. MacIntyre:

Q. Can you answer it any differently thinking of it in that light, Professor?

A. Well, my comment—it seems to me necessary at this point to make it—is I do not know what is in your mind when you talk about economic theory and economic principles.

As a scientist, it is my understanding that principles arise as an attempt to explain specific happenings, specific

relationships. There are no abstract principles except in terms of actual happening. And I can't give an answer to the sort of question you raised except in terms of factual relationships.

Q. The one set of facts in a particular place.

44469 A. Well, let me point this out—

Trial Examiner Norwood: Now, let us not discuss this any further. Ask your question.

By Mr. MacIntyre:

Q. Professor, would an economist logically expect that buyers located at or near the place of production would willingly and knowingly pay a higher sum of money for a unit of the product to the seller than other buyers were willing to pay to the same seller at the same time, assuming the buyer to be the consumer, not buying or re-sale?

A. I do not think buyers would ever pay willingly more than they had to anywhere at any time.

Q. I do not think that answers the question.

A. Well, therefore, they would not willingly pay more than somebody else paid—not because somebody else paid it, but because they would not pay more than they had to.

Q. And as an economic principle would you say that one seller would sell to one buyer at less than he would sell to another if that buyer from which he can get the higher price will still get more of his goods?

A. No. On that assumption, on the assumption that he will sell him at the higher price, he will not sell it ordinarily. There may be questions of business judgment as to future repercussions of this thing. But, generally speaking, he sells at the highest price he can get, provided you are talking about selling at the same point

44470 geographically and the same point of time.

Q. Well, does the assumption that no buyer will pay a higher delivered cost for one seller's goods than for another on a homogeneous product also involve the assumption that no seller will quote a lower delivered price?

A. No seller will quote at a given moment of time and at a given place a lower delivered price than other sellers quote at that same time and place. That assumption is not present unless you add to it certain other assumptions.

Q. What?

A. Well, certainly, you would have to have information regarding the market conditions at that point.

Q. Well, such market conditions as Mr. Leisure has described to you in the hypotheses?

A. Yes. Well, I have already said that under all the conditions that were put to me in the first three long sets of hypotheses, it does seem to me to be the natural thing in the great majority of cases for the prices quoted at the point of delivery to be identical.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. MacIntyre: Read the last answer.

(Answer read.)

By Mr. MacIntyre:

44471 Q. Well, then, is it your opinion that economic theory assumes that competitors with advantages of location will not normally shade delivered prices of competitors having disadvantage in location?

A. I missed one word. Will not normally do what?

Q. Shade.

A. Shade.

Trial Examiner Norwood: Reduce.

A. Under the conditions of this industry as described to me—

Trial Examiner Norwood: Well, he asked it generally, about the principle generally. Leave this industry out of it.

The Witness: Well, that becomes an impossible question to answer. So many other conditions might—

Trial Examiner Norwood: There is no general principle on the subject?

The Witness: You cannot get a single principle that is not modified by other controlling conditions.

By Mr. MacIntyre:

Q. Well, now, when economists theorize with regard to price don't they assume that a seller is indifferent to whose money is involved, and that it is just the amount of money involved that determines the seller's price policy?

A. To the first part of that question, I would answer yes, with reservations; that is to say, whether we
44472 assume that it is a matter of indifference as to whose money is involved, that is not quite true, of course, again because we are dealing with finite situations.

If we can get the good will on the starting business of a large concern that is likely to be a repeat-order concern, that is more important to us than an order of the same size to a concern which in the present premises you do

not expect ever to be in the market again. So it does make some difference in a realistic world as to whose money it is.

Q. But in economic theory it makes no difference?

A. Well, I have tried to say that I do not agree with that statement, because economic theory must be a description of facts. Theory is always a description of factual relationships.

Q. Is that what you have been doing here, Professor, in giving us answers based on description—

A. Well, either based on facts or assumed facts. They may be assumed facts, but for the purpose of discussion they are facts, yes.

Q. And you have not stated, as you understand it, any principle that applies to those assumed facts that apply equally to other assumed facts in economic principles theoretically?

A. Not as economic principles theoretically, no. There are certain things which come out clearly—such as this law of demand we have spoken of repeated over
44473 and over again as a description of fact, not as an abstraction taken out of the way, but as a description of factual relationships. And if theory and fact do not coincide, one or the other of them is wrong. Either the theory is wrong, or the measurement of fact is wrong.

Q. Let us assume some facts, then, Professor:

Assume that cement is produced by two or more mills owned by two or more companies at point "A."

A. At point "A," did you say?

Q. Yes.

And that there are several consumers located at that point who buy and consume that product.

Assume that the delivered price quoted to those consumers at that point is the equivalent of the base price of competitors at other points distantly located, with freight rate from that distantly located point to this point "A" of 50 cents per barrel or more.

Assume that shipments are actually made at frequent intervals from this distant point to point "A," and assume that each of the mills located at point "A" at or about the same time, during which there was no change in this base price, also made shipments from point "A" to this distant point, on which they absorbed freight of more than 50 cents per barrel to affect delivery to cus-

tomers to which they sold to this distant point, and that their net return on such shipments amount to more
44474 than 50 cents per barrel less than the net return they realized from customers located at point "A" on which they were then currently receiving from customers at point "A."

And assume further that these other mills located at this distant point were at that time shipping considerable quantities of cement to dealers or to consumers in point "A" for which they received exactly the same destination prices as those quoted by the mills located at point "A."

Do you think there that the sellers are acting in conformity with the principle of indifference as to whose money that they are accepting for the identical products that they are selling to more than one buyer?

A. Well, let us keep in mind first that I have said I conceive of certain conditions in which sellers will not operate in accordance with the principle of indifference as to whose money they are receiving.

Q. Why wouldn't they operate according to the principle of indifference in that set of circumstances?

A. There may be many reasons. There may be many reasons. One of them is that the situation in "A" is a temporary situation; that they want to hold certain customers in the distant point because they cannot always sell their entire output satisfactorily in "A." That might very well be an explanation of this sort of thing.

44475 I can't conceive of their doing this particular thing by agreement. It does not look to me to be a logical thing for people who are sharing the market in an agreement sense, or who are in a monopolistic position. They must, it seems to me, have been operating in what they thought was their best long-time interest, and which under the circumstances of some limited amount of lack of indifference on the part of buyers, due to a lack of belief on the part of the buyers that there is actual homogeneity of product and services accompanied with it. They find that after all they can't sell all the buyers in "A," since "A"—since the buyers in "A" prefer to buy from the sellers who are located in this distant point, which we might call "X," and therefore they are forced in seeking their full market—a market which takes off their full sup-

ply to intrude on what would under more perfect conditions be the normal market area of "X".

Those reasons seem to me to raise questions, at least, as to whether there is any necessary assumption of violation of the principle, so called principle of indifference. I think there may be several things that would explain this type of action that would preclude the workings of the so called principle of indifference.

Q. Now, let us assume away the first explanation you gave by assuming that this is not temporary but has continued over a period of many years, or several
44476 years. Is your answer different?

A. Well, if you assume away that, that is assumed away. There remain, however, other explanations of the action rather than a complete departure from the principle of indifference.

Q. Any other explanations than those you have already made?

A. I think those are adequate.

Q. Can you think of any others?

A. I do not at the moment think of others. That does not mean that there are not others.

Q. You are positive, speaking as an economist, in your opinion, that it could not be explained by any collusive arrangement, even if the collusive arrangement looked towards the quoting of identical prices by the mills at point "A" and the mills—that is, quoting identical and uniform prices at point "A" and the distant point by the mills at both points?

A. No, I have not said that it could not be explained by collusion. What I said the other day, and what I shall repeat now, is, it seems to me a test,—not conclusive but important,—of collusion. It is not a direct evidence of collusion. A test then becomes the reasonableness of the thing agreed upon in the interests of the individuals party to the agreement. When that test is applied to this situation that you have described, it seems to me that this situation is not in all likelihood a situation arising out of collusion.

Q. Not even if it involved the collusive arrange-
44477 ment that either of the mills at the distant point or the mills at point "A" would quote prices below each other at either of those points?

A. If I understand that question, that these mills would

quote prices below each other at the other person's point, that would be even a more peculiar thing for them to agree upon.

Trial Examiner Norwood: Read that question again.

(Question read.)

By Mr. MacIntyre:

Q. In other words, you do not consider that a group of sellers would have any interest in entering into a collusive arrangement whereby they would not quote delivered prices below each other's openly published price?

A. Now, Mr. MacIntyre, you have exactly reversed your previous question. I have not answered the present question.

Q. Well, will you answer it?

Mr. Bond: Which?

Mr. MacIntyre: The last one.

A. I can see circumstances where individual producers might consider in their best interests individually to enter into an arrangement by which they would agree not to quote prices below each other in some pattern of division of territory. Just how such an arrangement would be implemented seems to me would be somewhat complicated, in what territory it would go one way and in what territory it would go the other. But I can see that it
44478 could be done, and it could be considered by the individuals doing it to be in their own individual self-interests. I think they would be mistaken, frankly, but I think they might think they were on the right track.

By Mr. MacIntyre:

Q. And even under the circumstances that were outlined to you in that set of assumptions that I gave you a few minutes ago?

A. Yes. I can conceive of a group of men agreeing upon that, but I can't conceive—and here is where one of your other assumptions comes in—I can't conceive of their not realizing before very long that they were wrong in their original assumption that this would be in their own individual best interest.

Now, you put in the assumption that this is continued for a considerable period of time. That, it seems to me, has raised a strong presumption of doubt.

Q. Do you see no objective that competitors would care to accomplish through a collusive arrangement quoting

identically delivered prices if they did it over a period of five years or more?

A. Under the circumstances that you have described and the assumptions that surround this industry, I see no reason to expect an agreement of that sort that would persist.

44479 Q. Professor, just before lunch I believe you stated what, in your opinion, rationalized to some degree the action of a seller in taking different prices from different buyers of his in different markets that he had separated, even though other sales were being made at those same prices or delivered cost to the same purchasers by his so-called competitors; do you recall?

A. We were discussing something of that sort, yes.

Q. You were rationalizing at that time somewhat from the viewpoint of the seller involved, I believe?

A. Yes.

Q. Now, do you, or can you rationalize such circumstances from the view of economic soundness as easily as you have from the viewpoint of the seller?

A. Well, do you mean "economic soundness,"—I am not sure that I know what you mean by the term
44480 "economic soundness." What do you mean as you are using it in this question?

Q. Well, you rationalized it from the viewpoint of the seller. I am asking you now, can you equally and as easily rationalize from the viewpoint for a seller to do that,—from the viewpoint of everyone that is looking at the seller in his doing so?

A. Well, all economic situations involve, I take it, conflicts of interest, and I am not certain that you can have any solution of an individual bargain that is as favorable to any one of those people as some other solution might be. How you put them altogether finally and, therefore, as you express it, rationalize a particular action from the viewpoint of every one at the same time, it seems to me to be impossible.

Q. Well, from the viewpoint of an economist, then, when he looks to that action on the part of a seller.

A. Well, under the circumstances that have been set up in the assumptions descriptive of this industry, it seems to me as an economist that the actions described with respect to the different schemes of quoting prices in vogue in this industry are rational actions, if that is the question you are putting to me.

Q. Well, do you mean rational from the viewpoint of a seller in accomplishing what he believed to be in his best interest?

A. A trade always involves both a buyer and a seller, and the trades which take place in this industry as described to me on the whole to be a result of action
44481 to be expected on the part of both of them, each free to operate in his own best interest,—in what he believes to be his own best interests.

Q. Yes, but is that, in your opinion, economically sound for him to do so?

A. Well, if we start with the assumption that we want our economic direction of this particular industry through the forces of competition as they can operate in such an industry, characterized by relatively small number of plants, and by immobility of plant, by different competitors or consumers and producers geographically, if we assume that it is in the best interest, or is rational to permit such an industry to be directed by competition, then I should say that each of these groups, the buyers on the one hand and the sellers on the other, operating individually in what they consider to be their own individual best interests, gives us the desired result of competitive control of the industry,—control in competitive direction of the industry.

Q. But you are assuming independent action to start with.

A. That is correct, and I have no other assumption before me.

Q. If you have just the action, what is it—what, in your opinion, is its soundness from the viewpoint of the national economy; that is, this cross-hauling and cross-shipping and pegging of different prices?

44482 A. That I thought was the question I have already answered. I have answered it in two or three different ways, which I can re-summarize, if you want me to, that there may be from the standpoint of most economical use of resources there may be better ways than the competitive way of controlling the development and activities in this industry, and I am not saying there are, but I can conceive that there might be better ways of controlling the industry, but the actions which are occurring in this industry are, it seems to me, as a student of such things, the actions to be expected when the individuals,

both buyers and sellers, operating as individuals, are free to act in what they believe to be in their own best interests in an industry with the general characteristics that this industry possesses.

Q. Yes, but do you view it being in the best interest of the public as distinguished from the best interests of the seller who is so acting?

A. Your question is again the same one, do I believe that the competitive method of control of this industry is in the public interest, and I have tried to say that I cannot answer that question unless you give me some other assumptions as to what you want to assume is the public's best interest.

Q. Well, let me ask you to answer it from the same viewpoint that you wrote when in reference to the operation of the so-called Pittsburgh Plus system in the steel industry, whereby a shipper from Pittsburgh to
44483 Chicago and the shipper in Chicago shipped to Pittsburgh, and on the basis of identically delivered prices in those two localities, and you said that the Federal Trade Commission—

Q. (Continuing) —quite rightly condemned the system of pricing as obsolete.

Now, will you please answer the question I put to you from the same viewpoint that you wrote in that particular instance.

44485 Trial Examiner Norwood: I will sustain the objection on the grounds I have stated there.

By Mr. MacIntyre:

Q. Professor, didn't you write that portion of my question that I assumed that you had written?

Mr. Leisure: Now, I make the same objection.

Trial Examiner Norwood: The objection is overruled.

A. I expect I did.

By Mr. MacIntyre:

Q. Well, can't you tell me whether you did or did not?

Mr. Leisure: Just a moment.

The Professor having answered that he did, I move to strike both question and answer until they are in some way connected with this case. The Professor may have written some short stories, but unless it is connected in some way with the issues in this case, they should not be incorporated in this record by any such form of testimony.

Trial Examiner Norwood: The objection is overruled.

44486 By Mr. MacIntyre:

Q. Can't you tell me whether or not you did say that the Pittsburgh Plus system was quite rightly condemned by the Federal Trade Commission?

A. Finish it, please.

Trial Examiner Norwood: Wait a minute.

A. That is not the way you read it before; please make it—

Trial Examiner Norwood: Is that all? On what grounds do you want to put that—

Mr. MacIntyre: May we go back to the question, if Your Honor please, and you will see how that I used it in the question, and I have to now prove that he said it, or had written it so that I could assume in the question that that was something that could be properly assumed in the question.

Now, may we have the previous question read?

Trial Examiner Norwood: Read the question.

(Question read as follows:

"Q. Well, let me ask you to answer it from the same viewpoint that you wrote when in reference to the operation of the so-called Pittsburgh Plus system in the steel industry whereby a shipper from Pittsburgh to Chicago and the shipper in Chicago shipped to Pittsburgh, and on the basis of identically delivered prices in those two localities, and you said that the Federal Trade Com-

44487 mission quite rightly condemned the system of pricing as obsolete. Now, will you please answer the question I put to you from the same viewpoint that you wrote in that particular instance?")

By Mr. MacIntyre:

Q. That is the only purpose in stating that assumption.

Trial Examiner Norwood: Now, is it your contention that that is an expression by this witness that is inconsistent with the testimony he has given here with respect to the basing-point system; is that it?

Mr. MacIntyre: Yes, I do.

Mr. Leisure: If that is his contention, then I ask for it to appear on the record where it is inconsistent. Mr. MacIntyre's mere assertion that it is inconsisent is not

enough to get some writing in evidence that is otherwise inadmissible.

Trial Examiner Norwood: I think that this expression of the witness may come in, and he may be asked to explain it, to reconcile it with the testimony that I recall he has given here.

Mr. Leisure: But this is the first time that the Pittsburgh Plus has been testified about so far as this witness has been concerned, so I do not see how it can be inconsistent.

Trial Examiner Norwood: Yes. It is all prop-
44488 erly involved here.

The objection is overruled.

Mr. Porter: Your Honor, there was no reference in the record in this case to the facts in the Pittsburgh Plus case.

Trial Examiner Norwood: No. We will bring that out, or at least it may be done.

Answer the question.

A. Well, the question, if I understand it correctly, now asks me to answer a previous question from the same viewpoint that I wrote something about Pittsburgh Plus.

By Mr. MacIntyre:

Q. Yes.

A. I think I have already done so.

Trial Examiner Norwood: You admit having written that?

The Witness: Oh, yes, yes, I admit having written that, and I think my previous answer to Mr. MacIntyre's question has been given from precisely the same viewpoint as that statement which he quoted.

By Mr. MacIntyre:

Q. Well, what difference can you now point out to us that applied to only one system, that is, that of the Portland cement industry from that of the steel industry, where you said the Trade Commission has quite rightly
44489 condemned the steel system as of that day as obsolete?

Q. And which differences lead you to different conclusions as to the competitive character or economic soundness of the two systems?

A. Well, the question, I think, is perhaps quite a different question. I am not necessarily talking about economic soundness, although my answer to the original ques-

tion I think is, the quotation is almost self-explanatory, it seems to me. I said that in my opinion under the conditions that then existed in the steel industry the Pittsburgh Plus method of pricing, which I was discussing in very brief and elementary terms, as a system with a single basing point, namely Pittsburgh, had been rendered obsolete by certain developments that had occurred within the
44490 industry, which developments included primarily the development of large centers of steel production away from Pittsburgh. Now, that rendered obsolete, in my opinion, as I viewed the thing, ten or a dozen years ago, from which statement those quotations are taken, that rendered the system obsolete, the system of a single basing point.

Well, that has no bearing at all upon the facts that have been put before me with respect to the pricing system now employed in the cement industry. We have no assumption regarding a single basing-point system in the cement industry. The two things that are under discussion are fundamentally different things.

Trial Examiner Norwood: Was that the only grounds on which you approved the Commission's action in the Pittsburgh Plus case?

The Witness: That is the only ground on which I approved it in that statement, yes.

44492 Q. Now, Professor, can you see any difference in the situation about what you wrote at that time with respect to the Pittsburgh Plus from that set of assumptions that I gave you just before the lunch hour with respect to point "A," and some distant point where the distant point is the basing point, and point "A" is not a basing point, but is the delivered price quoted there at point "A" is the distant point base price plus to point "A."

A. That is right.

Q. That is plus rail freight to point "A."

A. "Yes" and "no." That is to say, I had before me in the case that I was discussing Pittsburgh Plus a lot of factual information pertaining to the volume of productive capacity in various locations, and the volume of consumptive demand in various locations. You have put before me a situation in which there are only two locations, "A" and "X." You have made incomplete assumptions with respect to the continuity of supply and the continuity of de-

mand in those two locations. You have not asked me whether you have not told me whether or not there are other market points that are involved in the whole picture. I feel I have a very much less complete picture of the situation in the assumptions you place before me than I had at the time that I drew my personal conclusion as
44493 briefly summarized in the statement from which you are quoting.

Trial Examiner Norwood: In that previous statement there, where you said that the Federal Trade Commission has properly prohibited the Pittsburgh Plus method because it was obsolete, did you understand that that was the reason that the Federal Trade Commission prohibited that practice?

The Witness: Of course, I did not understand that that was the legal expression of the reason, Your Honor. It would be my feeling that they might have held differently under—even had the same statutes prevailed, had they considered the matter 25 or 30 years earlier than they did, because the facts within the industry were different at the two points of time.

By Mr. MacIntyre:

Q. And, Professor, I want to read you another statement.

Mr. Leisure: Well, now, before we have another one—

By Mr. MacIntyre:

Q. And ask you a question posed on it.

Mr. Leisure: Before we have another question, Mr. MacIntyre now having completed the line of testimony on that one statement that he read and to which I objected, and to the entire line, and the Examiner having asked Mr. MacIntyre if he claimed that this was inconsistent with the Professor's prior statements on the witness
44494 stand, and Mr. MacIntyre having assured the Examiner that he did, I now move to strike all of the questions and answers on the ground that the subsequent testimony has not borne out that contention, and there is no showing that there is anything inconsistent. In fact, the record shows the opposite; it shows that we are talking about two different things, and they could not be inconsistent.

Mr. MacIntyre: If Your Honor please, the witness' answer to my last question shows that it is connected with

that situation that we were discussing just prior to the lunch hour, and explains it.

Trial Examiner Norwood: Well, I will take your motion under consideration and rule on it when I can see it in the record and give it a little study.

Go ahead. Proceed.

By Mr. MacIntyre:

Q. I want to read you a statement and then ask you a question based on it, Professor:

"Abnormal difference in prices between localities may be due to peculiar monopoly conditions. It is possible for a concern to charge unduly high prices in territories where competition is absent, and lower prices where active competition is found."

Do you agree with that statement?

Trial Examiner Norwood: Are you asking him, 44495 Did you make that statement?

Mr. MacIntyre: Well, whether he made it or not, if Your Honor please, I think I would be entitled to ask him whether he agreed with it.

Don't you think—

Trial Examiner Norwood: You have not said where the statement is from.

Mr. MacIntyre: No.

Trial Examiner Norwood: Well, go ahead.

Mr. MacIntyre: I am asking him if he agrees with the statement.

The Witness: May I see the statement and re-read the middle sentence in it?

(Mr. MacIntyre hands a book to the witness.)

A. Is this it?

Yes, I would agree with that statement that under conditions and at certain times it is possible for a firm to be in a monopolistic position in one territory, and in that territory charge monopoly prices, and to be in competition in another territory, and in that territory charge competitive prices, which would be lower—which might be lower than the monopoly prices that it charges elsewhere; yes.

By Mr. MacIntyre:

Q. That is one indication of a monopoly under certain circumstances; isn't it?

44496 A. Well, it might be an indication of monopoly, it might. The same situation, of course, might exist in an industry where you have, as you have in this hypo-

thetical industry that we have been discussing, a pattern of so-called natural territories surrounding consumers, that is different geographically from the pattern of natural territories surrounding producers, even under any basis of competition that I can conceive with that physical starting point; you might have a firm under the compulsion of competition getting different prices or net returns at its mill, even though all of those returns were fixed by competition, the point being that you are competing against different forces in different places and that competition being of different degree and against different cost situations of necessity mathematically results in different net returns if you are going to compete at all in those different markets.

Now, while such a situation could occur under monopoly, it could also occur equally well under competition. That is the point I want to make.

Q. Well, do you agree with this statement "It is worthwhile, as individuals, to trade with the people of other communities when and only when their prices make it profitable to do so"?

A. Yes. I—. Now, in real situations one always has to modify even a statement of that sort. It is generally believed, I think, by business men that they may get a
44497 deferred result of trading, and they may trade for a while even though they recognize full well that those trades at the moment are unprofitable,—appear to be unprofitable trades to their bookkeeper. Now, with that one modification I would of course agree with the statement.

Q. Well, I am thinking of it as an abstract proposition.

A. Right—

Q. Now, will you agree with this statement "A region will do well to export those products which are lower in price within its borders than elsewhere, and to import those that are higher in price at home than abroad"?

A. Yes, as a general statement I agree to that.

Q. Professor, on direct you stated to what extent you agreed and disagreed with the testimony of Professor Fetter in his statement of a market. Do you recall?

A. I recall that question, yes.

Q. Now, I would like to read you a statement concerning the concept of the term "market," and ask you whether or not you agree with it:

"The term 'market' is so generally used that it might

seem to require no explanation. The very fact of universal usage has resulted, however, in different meanings attached to the word. These common meanings may be separated into three fairly distinct concepts: (1) A market is a place
where goods are bought and sold. This is the geo-
44498 graphical concept of a market. It may be expanded to include the area surrounding the market place, from which goods are brought for sale, or to which they are dispersed after sale. (2) It is also a series of individuals, firms, and organizations which serve to pass a given sort of good from its maker or producer to its user or consumer. This is the structural concept. (3) Finally, a market consists of the conditions and forces which determine the demand for, and the supply of, any good or service and which results in a price. Every exchange is at a price, and price making is, in a very real sense, the central problem of economics. Consequently, this third concept of a market—which may be called the price-making concept—is more important than either of the other two."

I have asked you if you agree with that statement of the definition of a market.

A. Well, I made that statement to present to freshmen at the University of Minnesota, and I still think it is a pretty good statement to present to the freshmen at the University of Minnesota. It is not absolutely complete but as an introductory elementary statement of the situation I think it is pretty good.

Q. Well, at least it is pretty clearly stated there?

A. I would rather somebody else judge its clarity than I, since I wrote it.

Trial Examiner Norwood: It could be better, you
44499 think?

The Witness: Undoubtedly.

By Mr. MacIntyre:

Q. How do you reconcile your definition of "market," such as the one I have just read, with the statement that you made on direct to the effect that there are no different types of competitive markets?

Mr. Bond: Where is that statement? What page?

Mr. MacIntyre: Off the record, I do not have the page.

The Witness: May I have the statement read?

Mr. MacIntyre: Please read the question.

Trial Examiner Norwood: Read the question.

(Question read.)

By Mr. MacIntyre:

Q. I will change that to read: "No typical forms of competitive markets." I think that is more nearly—

A. Well, that still is not a quotation. Now, I remember what you asked me, or what I said, I mean. I said I doubted if there was any normal or typical method of competitive pricing.

Q. Well, how do you reconcile that testimony with this definition of a market which sets up three different types of concepts, and which you and I both agree is a rather clear statement?

44500 A. Well, the things do not meet head-on anywhere. I cannot see that they are talking about the same thing at all.

Q. You do not think that this expresses different types of markets, competitive markets?

A. Well, not in the same sense that I was using the term the other day. I was using the term the other day in connection mainly with what is the third concept here. Of course, there are types of market structure. I will agree to such thing as that. I suppose they could be classified. I have done some classifying, types of market structure, but I was not talking about the structural concept when I made that statement the other day.

Q. Well, is your concept of a perfect market from the standpoint of price making any different from the concept held by Dr. Fetter, as you understand it?

A. I commented on—I cannot answer that entirely because I do not know just what Dr. Fetter posed as the perfect concept, but if you are referring now to one quotation from him, which I was asked to comment upon, I pointed out the other day it seemed to me he was permitting in that concept a pretty small number of sellers, for one thing, and therefore it would not be a perfect market. He made no reference to the degree of mobility of the factors of production, and therefore the description of a market in the third sentence, in which I defined it in the quotation you read a moment ago—I am sorry, I believe
44501 it would make the record clearer if I can have this read back.

Trial Examiner Thorwood: Read it.

(Answer read.)

A. (Continuing.) —is incomplete as to whether or not it would be a perfect market. To have a perfect market

structure you might be able to disregard mobility of buying units but not of selling units.

By Mr. MacIntyre:

Q. Well, are there any other differences, as you note them, between his statement of a perfect market as read to you by Mr. Leisure, and your concept of a perfect market?

A. Well, I would have to have the statement read over again to be sure, but those are the two I am sure are there.

Q. Well, you have expressed one requirement for a perfect market as being that of including well-informed buyers. Do you recall?

A. That is correct.

Q. Well, well informed as to what, Professor, did you have in mind?

A. The situation in the industry—the situation in the industry including the supply that is in existence, the responsiveness of supply in the future to price, price offered by the buyer, probable changes in the general business condition as that affects the demand for this product. Those items, at least, would be included in what I had in mind in perfect or full information on the part of

44502 the buyer.

Q. He would have to be well informed as to all portions in detail—as to all portions of the consideration that would be expected to pass for the stated price, would he?

A. Well, for perfection, yes. For close approximation to perfection, I suppose there are a number of details as you speak of them that would not be important to him.

Q. Anything that would affect the value of the product to the buyer, however, he would have to know about in order for the market to be a perfect market from his standpoint, or from anyone looking at it in the abstract?

A. I should agree.

Q. When we were discussing markets at the time Mr. Leisure was questioning you you used the word, in describing one situation, "higgling" over prices. Do you see anything economically unsound for a buyer to higgle with the seller over, and try to bargain with him over the price that he is to pay for the product the seller is offering?

A. That, you see, is again the sort of question I am trying to avoid in order to be precise in my answers; "Eco-

nomically unsound." Higgling over the market cannot occur under conditions of perfect competition.

Q. In other words, there is no bargaining for price advantage under perfect competition?

A. Under perfect competition you either take or
44503 leave. You are faced—the seller is faced with a horizontal demand schedule, if you will. He takes the price or he leaves it, and that is that.

Q. Would you say there is any higgling over prices on the large commodity and security exchanges when they have bid and asked prices that did not bring the buyer and seller together on a transaction price?

A. I know nothing at all about the security markets. On the commodity market there is a lot of higgling, some of it done with a very definite intention of moving a price in a direction favorable to speculators, a tremendous amount of it, and keep in mind we talk a lot about these commodity markets, sometimes forgetting what they are. Keep in mind that among the principal traders on those markets are a few very large operators, such, for example, as the Bunte firm, or Continental Grain firm, and so on, very large international operators, not small people. They are people who can by their decision to sell or not to sell affect the market situation materially, quite different from the tenets of pure or perfect competition. Keep in mind another thing in connection with these commodity markets, that there are many people doing this higgling, as you quite properly express it, who never intend to take any grain off the market, and who have, never have any grain that they intend to deliver on the market. There is an artificial situation there that is not met with in many, I
44504 might even say most of our market situations.

Q Well, Professor, I did not ask for a discourse on the economic benefits that we get from commodity markets. I was asking you if you did not recognize this element of higgling on that market.

A. Yes, I do.

Mr. Leisure: He explained it rather fully, I think.

By Mr. MacIntyre:

Q. And you recognize it as an element, a factor, on such markets with respect to cash spot sales as distinguished from speculative future offers and sales?

A. Yes.

Q. Is there anything wrong with it that you can see—that is, the higgling over the price for a cash spot sale?

A. You see, I refuse over and over again to discuss right and wrong. If you mean, is it a clean-cut natural result of something that approaches perfect competition, my answer is no, it is not. Now, I do not know whether it is right or wrong, that is entirely another question which I refuse to discuss.

Q. You do not think it fits into a picture of perfect competition when the buyer is doing that for the purpose of getting a better price or the best price that he can for himself?

A. I do not.

Q. Is it more perfect competition, in your opinion, for him to accept the price that is set by the seller without higgling over it; is that correct?

44505

A. His recourse is to refuse to accept that price, don't you see.

Q. That is, just take it or leave it.

A. That is right.

Q. Now, I would like to read you another statement, and ask you if you agree with it:

"Although it is essential to draw a sharp distinction between sporadic, constant uniformity in fields in which price is determined by direct negotiation between buyer and seller in each transaction, there is no need for a similar distinction in the case of competitive bids. Bids are submitted in response to a specific invitation; they are concerned with a definite transaction. Identity of bids is seldom a mere fortuitous occurrence or the product of natural economic causes, as may be the cause of sporadic uniformity in a fluctuating market. Such identity is an abnormal condition which is not to be anticipated in an industry truly competitive."

My question is, do you agree with that statement?

A. I would agree with that statement, as I was at that time using the word "truly" competitive, where you have a very large number of sellers.

Q. Well, taking the entire statement in the abstract as I have given it here, do you agree with it, as I understand it?

A. I do not like statements in the abstract. I have tried to avoid by statements in the abstract, and make them in the concrete. Again, I think that is a pretty good elementary first approximation to

44506

which many exceptions must be made depending upon the degree of purity or perfection that you have under the competitive system.

Q. Well, now, taking some of those into account as well as your thought that circumstances in the cement industry, as put to you in the hypotheses by Mr. Leisure, to the effect that they would naturally and logically lead you, as an economist, to expect uniformity in the cement industry, I now ask you if whether or not it is your testimony that you expect the different manufacturers in the cement industry in competition with each other in making their price quotations to attempt to make them no lower than their competitors?

A. I think that that would be a thing to be expected under the conditions as described to me in the hypotheses, where you have your relatively small number of sellers, that their experience either personally entered into or that they have read about and been told about the price reductions are likely to be immediately met by someone else. Price reduction is likely to run into a price war, that it is quite likely under those circumstances that competitors will try to reach the other fellow's price, and where secret sealed bids are involved will therefore bid at the same price.

Q. Then, we understand your testimony, Professor, to be to the effect that economists expect sellers
44507 acting as competitors will aim and try to make price quotations the same, that is, identical and uniform with each other?

A. Again putting on the limitations which I have been insisting upon here, that you have your limited number of mature and well-informed sellers, that you are limiting the question to that sort of a situation, and that these sellers are aware of the likelihood of a price war resulting once one of them starts cutting prices, through the retaliation of other sellers, then I believe as one economist that the natural tendency is for the same price to be quoted at point of use, that is, at point where the consumer, or buyer must make his comparisons final, the same price to prevail there as offered by different sellers.

Q. Do you think, then, that in an effort to avoid any probability of this retaliation on the part of some other sellers, that one seller will try to make his price the same as others?

A. Given the information on which he can do it, yes; I should think so.

44510 Q. I would like to read you another statement, Professor, and ask you whether or not you agree with it:

"Not only do brands of similar quality sell at differing prices, but even the prices of identical brands vary greatly. For example, a brand of cooking oil was priced by one neighborhood store at 39 cents a quart, and by another one block away for 65 cents on the same day. A shopper in a large city recently priced two identical chairs in three different stores in the city at $48, $63, and $78. To

44511 be sure, in this case there were some differences in 'services,' such as credit arrangements, but in the main this difference in prices can be accounted for only by difference in reputation and prestige of the stores."

Haven't you in your studies found such situations to be common

A. With respect to consumer goods, yes, very common.

Q. That is where the goods are not being bought for re-sale?

A. That is right. Well, no, that is not quite my definition of "consumer goods," Mr. MacIntyre. "Consumer goods" are goods which are bought for use by the final consumer. Many industrial goods are bought not for re-sale. I would not include those in this category of consumer goods to which I just referred.

Q. Well, in the light of that answer, let me read you another statement:

"Similarly, in the industrial markets where sales result from individual bids, one selling firm may make a low bid on the material for one job and a much higher bid for another similar job on the same day. Some of the many considerations which influence the dealer in his price policy—cut back to the words 'on the same day.'"

Doesn't that modify your last answer to the effect that such price difference can occur only in retail consuming markets?

44512 A. I never made such—

Q. You agree with that last statement that I just read; do you?

A. Yes, I can agree to that.

Q. That is your statement, isn't it, that you have written heretofore?

A. If you say it comes from the same book, I assume it is my statement all right.

Q. I don't believe that you answered an earlier question that I asked concerning this absolute uniformity of prices. I asked you if you could cite me any instance that had come to you in connection with your many years of study of prices where they were absolutely uniform and identical as quoted by a number of sellers over a period of time.

A. Well, we are getting to—

Q. Except in such industries as the cement industry.

A. Well, that is quite modified, but we are getting two things that may confuse here, and I want to be sure what you mean. Are you including both the concept of uniformity at each moment of time, and also rigidity over a period of time? Are you putting them both into the same question?

Q. Yes.

A. That is both uniformity at each moment of time along the line, and rigidity.

Q. Yes.

4451 3 A. Well, one of the striking cases—did you limit this to industrial goods?

Q. Yes, we can for the moment.

A. I wondered; I had forgotten whether you did or not. I was going to give the example of milk in New York City; which, of course, is not an industrial good, but consumer good. I believe that one of the most completely rigid prices. That does not answer your question, either.

No, I do not know of any case,—do not think of any case at the moment of competition, of both complete uniformity at a moment of time and rigidity over a period of time; I do not think of any case.

Q. Something that economists think very unusual when it occurs?

A. I would want to try and satisfy my curiosity as to why it occurred, if I saw it.

Q. You see and can think of no explanation that an economist can make without—that is, from an economic viewpoint—without going into the specific instance?

A. That is right.

Q. Investigation?

A. That is right.

Mr. Leisure: Did Mr. MacIntyre's question include an

industry good, homogeneous industry good, or was it any industry good?

44514 Mr. MacIntyre: We were talking about homogeneous industry good, Mr. Leisure, on that last question.

The Witness: Well, certainly I would not expect uniformity unless it was homogeneous.

Q. Professor, in the light of your last answer, would you, therefore, agree with this statement:

"It is readily seen, therefore, that one cannot with any propriety speak of; nor categorically define, any one price as 'the market price' of a certain good. The market price, in many cases, instead of being definite and definable, is rather a series of prices for like goods—and for varying grades—in any market area."

A. Well, I do not need the light of my last answer, which I have forgotten, but I will agree with the statement.

Q. You recognize that as a statement of yours?

44515 A. In "Market Organization," yes.

Q. Now, on direct examination you have stated that rigidity alone did not, in your opinion, necessarily give rise to an inference of collusion, but I believe you did state that when you bring rigidity into the picture over a period of time, with absolute uniformity of prices, that you do have presented to you something that you would like some investigation or further information on it before you could say that it did or did not arise from collusive arrangement.

A. I think my other answer was to a question stated the other way around. I wanted to know what the causes were, and one of the things that might conceivably bring about such a result would be collusive action. As I have said several times, however, I can think of no instance where collusive action under those would bring about those results and be sensible collusive action. That is the thing I keep coming back to in connection with this type of question.

Q. You just can't find any explanation for it as an economist, can you?

A. Oh, that I have not said. In individual instances I might find many specific explanations. One explanation you find in one set of circumstances, and another applying to another set of circumstances.

I think on direct I did testify to that opinion, but if your question means do you find a single explanation
44516 that you would expect to govern all such cases that might occur, my answer would be "No, I do not."

Q. Well, on the basis of economic theory of competition, can you find any explanation there for such circumstances as that outlined?

A. I have—yes. Given certain imperfections in the characteristics of the industry which prevent competition working out to its final and logical result, that would occur. If those imperfections did not exist, then I can say rivalry between a small group of individuals, each operating in his—in what he believes to be his own best interests might very well result in a high degree of uniformity of price and a considerable period of rigidity of price.

If both of those two things,—that is, the uniformity and the rigidity,—were absolutes, no variation whatsoever, I should be suspicious of its having arisen in the way I have just described. But a high degree of uniformity and a high degree of rigidity can, in my opinion, best be explained under the operation of active rivalry of individuals each operating in what he believes to be his own best interest in an industry such as the industry described in the hypotheses put before me in this case.

Q. If you had absolute identity or uniformity, as contrasted with this high degree which you spoke about, with respect to quotations by a number of sellers to a
44517 buyer over a period of time, a considerable period of time, and all of the transactions were the same with respect to that buyer, and no deviation from such quotations or prices charged with respect to this buyer, but probably some other deviation with respect to some other seller. Would you say that—

A. With respect to what?

Q. Some other seller, rather than this group which we are now talking about. This group would stand together in their quotations—with absolute uniformity over a long period of time in their quotations to this buyer. Will you say that that can be explained on any theory of economics?

A. If I might paraphrase the situation which you have set, you have a group of sellers—

Q. Yes.

A. —the personnel of which remains fixed.

Q. Yes, supposed to be in competition with each other.

A. Yes, and that they are quoting to a buyer, or to a group of buyers—

Q. Well, say that there is a buyer. We will take that first.

A. Well, quoting to that one buyer always at the same price.

Q. Well, not necessarily at the same price each time they quote, but when they do quote each of these sellers in that group quotes the same price.

A. The same price, and you add the high degree of rigidity.

Q. Yes; that is, over a period of time that occurs.

44518 A. Yes.

Under the one assumption that this one buyer is not their sole market, I see no inference of collusion in those assumptions at all.

Q. Well, I am asking you if that can be explained rationally from an economic viewpoint as an expression of competition.

A. Oh, yes.

Q. On the part of those sellers.

A. Yes; I should say so.

Q. Even though some one additional seller out of this group sneaks in and makes a quotation below the prices that they set?

A. Well, you made the point in your assumptions that this was not a completely rigid price.

Q. It is rigid in so far as this first group of sellers was concerned—this half dozen or so.

A. Now you have changed the assumption.

Q. They do not deviate. In transaction 1 they all quote the same price; in transaction 2 they quote a different price but all quote the same price. In transaction 3 it is the same occurrence, and it goes on like that over a period of months and years, with these six or eight quoting to that buyer the same price at a given time and place.

A. Well, yes, that would seem to me to be perfectly logical—perfectly explainable as a competitive act.

Q. Well, then, Professor, why did you state as

44519 you did in line 6, page 44340, that such a condition as that would catch the eye of an economist who is studying prices and price movements?

Mr. Leisure: Such a condition as what?

Mr. MacIntyre: The one I have just outlined to the Professor.

Mr. Leisure: Now, prices were absolutely rigid, is what the record says.

Mr. MacIntyre: That is what I assumed with reference to these half dozen.

Mr. Leisure: The record will show what you assumed.

Trial Examiner Norwood: Let the Doctor discuss it there.

A. Well, I think your assumptions have shifted. I think the record will show that I felt as you were asking the question that first you put in rigidity; then you took it out; then you ended with it out. You said that all quoted one time; all quoted on a different level at a different time. And now you take rigidity out. I was talking here with rigidity in. Moreover, I was talking here on this page about a general situation, not the price that would be quoted to a single buyer. You have limited me in your question to a situation of what happens with respect to a single buyer.

I still repeat what I said on page 44340, lines 6 and 7, and I do not see that anything I have said in answer 44520 to the present question in any way contradicts it.

By Mr. MacIntyre:

Q. Well, when these six sellers quote the same price to this buyer that we have assumed a few minutes ago, each time they quoted over a period of time running, say, two or three years, at the same time and place, would you say that that could be explained as competition on the basis of economic theory?

A. I think it could be very easily; yes.

Q. What is there about that proposition that would catch your eye, such as you mentioned there at the top of page 44340?

A. Why, I do not think it would catch my eye. I think that is perfectly clear when we talk about one buyer.

Q. You understand, Professor, that I have added rigidity, so you have absolute rigidity, absolute uniformity, every time they quote this buyer for a period of time at the same time and place.

A. Well, I would say that knowing nothing but rigidity, knowing nothing but the fact of rigidity, having no other facts concerning the industrial situation, that that would always catch my attention as a student of prices. I would want to know why the rigidity.

Q. And if no price movements took place in an industry, in a particular trading area, in the period from 1933 until some time in 1937, although conditions changed, as your general observation have known economic
44521 conditions to change generally, will you say that you would want something else in addition to what has been placed before you here to explain such rigidity?

A. Well, now, you mean by what has been placed before me this set of hypotheses to which my direct testimony was directed?

Q. Yes.

A. No.

Q. You think that what you had placed before you would account for an absolute rigid level of prices in a trading area in the current industry for a period of between four and five years?

A. I think that it could, yes. I would not want from those assumptions placed before me to say definitely that such price uniformity and rigidity did result from competition, but I say that it could very well have done so and could very well have been explained by nothing more than the assumptions placed before me.

Q. Is it your testimony that it could not be explained, in your opinion, by collusive arrangements?

A. I will answer that as I have on two or three previous occasions. I think it could be explained by collusive arrangement, but it does not seem to me likely, because it is not the kind of collusive arrangement that seems to me to make sense in the interest of the people making the arrangement.

Q. In your study of American industries, can you recall that you have ever come upon such rigidity in price when general economic conditions were changing,
44522 as was the case over that period of four or five years?

A. Well—

Q. That is, in a manufacturing industry?

A. Of course, the question can only be answered "no" if you put a rigid interpretation on the question, because I have never come across another period when prices in general were changing exactly as they were in that period. So that if you can put a rigid interpretation on your question, obviously the answer is "no."

Take a more liberal interpretation of the question, however, one finds—

Q. Professor, just a moment. I would prefer that, since we are trying to get along this afternoon, that you reserve your liberal interpretation for your Counsel on redirect.

44523 Q. On direct, Professor, Mr. Leisure discussed with you some of Dr. Viner's testimony in which the term "systematic" was used in connection with dumping, and you stated that you would be inclined to agree with Professor Viner in the connection in which that term was used there if you knew what that term "systematic" meant as he used it. You said, on the other hand, if we forget that term and consider that this dumping is one that is irregular, sporadic, occasional, you would be inclined to disagree with him.

Now, assume that this—

Mr. Leisure: What page is that, Mr. MacIntyre?

Mr. MacIntyre: Page 44346, line 23.

By Mr. MacIntyre:

Q. Now, assume, Professor, that this dumping, such as was being discussed by you and Mr. Leisure at that place in the record that I have just referred to, was dumping of a reciprocal character, involving cross-hauling between two points; that it was regular—it was not sporadic, but it was regular; that it was not merely occasional, but it was a frequent occurrence; and that it was methodical and fitted in logically into a pattern of prices that these two sellers had adopted and had used over a period of time, and which resulted in identically delivered price quotations by each of those sellers at each of given destination points into which this material was being

44524 dumped.

With those additional assumptions would you now agree with the testimony of Dr. Viner that Mr. Leisure called your attention to, line 13, page 44346 (handing record to the witness)?

A. If the synonyms which you have been using are supposed to define completely the term "systematic," I would not agree with Professor Viner.

Q. Can you think of any other definition for the word "systematic" than that of methodical, such as Webster uses?

A. Well, I would—when I answered the question the other day I had in mind a planned system rather than a resulting system. There is a fundamental distinction be-

tween the two. And the thing that I said would make me suspicious was if I knew there was a planned system involved here.

Q. Now, assume, following through your definition, that it is a planned system.

A. That is to say, the actual reciprocal dumping is planned.

Q. Yes. Assume that also.

A. Well, I do not believe you can plan the details of reciprocal dumping. Without finding it reciprocal, without both parties being parties to it, I think that would probably be true.

Now, you might have dumping in two different directions, in each case the individual doing the dumping
44525 planning the thing separate from the other dumping.

But if the two things are truly reciprocal, I believe they must be casually related. Perhaps you are not using the term in that sense, a reciprocal as a causal or mathematical relation to its principle.

Q. I am using it in the sense of "A" being located at point "B," and "C" being located at point "D," and "A" and "C" shipping to each other's point a good of a similar or identical character at the same point of time—

A. Well, of course, that—

Q. —whereby each of those two sellers at each of those points would quote a price no different from each other.

A. I think all of that can occur and does continuously occur in many industries without a planning of it by the two groups jointly.

Q. Can you cite any industry wherein it has occurred,—that is, in that manner without planning—where you know that it has occurred without planning?

A. No. You put me on the spot there because I have not been in the minds of business men in any industry, so I do not know what may have been planned in any American industry.

Q. So wherever such has occurred in industries other than the cement industry you can't say whether it grew out of planning or whether it did not grow out of planning, can you?

A. Of my own first hand knowledge, I cannot.
44526 That is correct. That is a factual question on which I am incompetent to speak.

Q. And have you ever made any investigation that

would lead you to a conclusion that, with respect to a particular industry, if used in that industry, such was not the result of planning?

A. Well, yes, I have. I have discussed it with business men and taken their answers as being true answers. Now, I have not been able to go further than that in any of my investigations.

Q. In other words, the only thing you relied upon in studying your conclusions that such result in industries was not the result of planning was the denial by the participants that they had planned it?

A. Plus the assumption of reasonableness or lack of reasonableness in the process itself.

Q. Will you explain, Professor, what is so unreasonable from the viewpoint of business men to want to agree to make their prices identical at a particular point in their doing so by agreement and according to a plan?

A. As the question is asked, of course I can't because I don't know what the results of that particular agreement might be. If you will say what the particular agreement is, and the effect it has, then, of course, I might be able to say whether—in what respect it seemed to me to be reasonable.

Q. Well, assuming it to have the results and the effects that Mr. Leisure told you that it had in the cement
44527 industry, one of identical delivered prices, and one of cross-hauling, and the like.

A. And freight absorption.

Q. Yes.

A. Reduction of mill nets.

Q. Freight absorptions running up to 25 percent or more on the shipment.

A. Well, the reason that that does not seem to me that that is a reasonable thing on which to have agreed is that if they were going to agree at all they might just as well agree on division of territory and save the cross-hauling and get a higher average mill net as a result of that type of agreement.

Now, it seems to me, operating in their own best interests, therefore, if they are going to agree, they are going to agree on a different thing than has been described to me as the prevailing pattern of price quoting in this industry.

Q. An economist would more readily recognize the oper-

ation of a collusive arrangement if it resulted in absolute division of territory than collusive arrangement in the cement industry operating as it is, if that is collusive arrangement; is that correct?

A. To me it would be a much more logical thing to investigate further; yes.

Q. It would be something that could be—if this 44528 is a collusive arrangement, it would be something that would be more difficult to discover, operating as it is, by an economist, say?

A. Now, wait a minute. I do not get the force of that question. More difficult to discover?

Q. That is, to discover the collusive character of it; that is, the collusiveness through which it was entered.

A. Well, that I have not been discussing at all, and I do not know what the answer is,—what type of agreement would be more difficult or easier to discover.

Q. Well, you have stated that a division of territory for the purpose of allotting business would be rather easily discovered.

A. Oh, I beg your pardon. I do not believe I said anything of that sort. What I did say about division of territory resulting from collusive arrangement was that it would give a larger net return, and therefore was more logical to expect than the type of pricing arrangement that actually exists in this—in the hypotheses.

Q. Are we to understand your testimony, Professor, that you believe it would be unreasonable and a lack of use of business sense on the part of business men to enter into a collusive arrangement whereby they would all quote identical delivered prices?

A. Yes, it seems to me that that would be an unreasonable thing, unless you have in the agreement a pecu- 44529 liar pattern of delivered prices on which you were agreeing, which pattern would be quite different than the pattern as described in the long set of hypotheses put before me.

Trial Examiner Norwood: What would it be like?

The Witness: Well, I can quite see, Your Honor, that it would be in the interest of a group that they agreed to quote the same delivered prices if those delivered prices are very high at each mill which is now considered a basing-point mill. Then it would be a comparatively easy thing for them. Even though the order went to some mill other

than the one at that location, it would be a comparatively easy thing to go one step further with the collusion and arrange to have facts of the "X," "Y," "Z" company called for the "M," "N," "O," mill, and they would have gotten their high local prices.

44547 Washington, D. C.,
Tuesday, September 24, 1940.

44548 ROLAND S. VAILE thereupon resumed the stand and testified further as follows:

Cross-Examination (Continued) by Mr. MacIntyre.

Q. Professor, on direct you stated that dumping from one market into another had the effect of increasing supply and lowering the price; do you recall?

A. I recall something to that effect. I think you have not completed the exact reference, but I recall the discussion of dumping; yes.

Q. Reciprocal dumping, that is cross-dumping by two markets, each into the other, would not have such effect as that, would it?

44549 A. Before we go further with dumping, I would like to ask you which of the two or three definitions of "dumping" you are using for the purpose of this cross-examination. Professor Viner, for example, at one place said that for a definition of dumping it was necessary that the price at which the commodity be sold in the market dumped upon be less than the going price in that market. At another place he talked about domestic dumping without that requirement. Now, are you including that requirement or are you not? I am certain Professor Viner used the term in two different ways without always distinguishing between the two.

Q. Let us here consider it in the first way at this time.

A. That is, that the price at which the commodity is sold in the dumped-upon market will be less than the going price in that market.

Now, your question.

Q. That is the going—no, the going price in the home market.

A. Well, that would be included in anyone's definition

of "dumping," I am sure, but this other thing Professor Viner spoke of as being an essential to international dumping, then when he started to talking about domestic dumping he apparently did not include that as an essential. I am asking if you want it included as an essential, or did not.

Q. Yes. I misunderstood you the first time. I want it included so long as price in the home market is below the price in the market into which the goods are dumped.

44550 We will consider it from that angle without consideration, the price in the market being below the so-called going market price.

A. I think you must have misspoken yourself just now. May we have your question read?

Trial Examiner Norwood: Read it.

(Question read.)

A. Well, that does not conform to anyone's definition of "dumping" that I ever heard of.

By Mr. MacIntyre:

Q. You do not consider it is an act of dumping to ship into some distant market goods and sell in that market at a price at or below the prices prevailing in that market, which prices are below the prices you realize in your home market?

A. Yes, that I would.

Q. That is dumping.

A. That is dumping, but that is exactly the opposite of what you said in the previous statement.

Q. Remember, Professor, I said in the market in which you are dumping, you are selling at or below the prices prevailing in that market.

A. That is right. You have now defined what I consider dumping, but I am sure the record will be clear what you now said is exactly the reverse of what you said in the statement I asked the Reporter to read back.

Q. You would consider what I have just said as

44551 a case of simple dumping?

A. That is right.

Q. And you would consider a case of dumping, from each of those markets into the other, as a reciprocal dumping?

A. That certainly is an entirely possible way of describing it, yes.

As I pointed out in direct examination, different peo-

ple use this term "dumping" with differences. I want to be sure which way you were using it, but I would accept that for the purpose of this morning's definition of dumping.

Q. Now, on direct, you stated simple dumping increased supply and lowered price in the market into which dumping took place. Now, I will ask you whether that is true in the case of reciprocal dumping.

Mr. Bond: If Your Honor please, the witness has not used the term "simple dumping," as Mr. MacIntyre quotes.

Trial Examiner Norwood: No. I think he understands it.

Mr. MacIntyre: He has just agreed with me that he understands what it means.

Trial Examiner Norwood: Go ahead.

A. That might or might not be true in the case of reciprocal dumping.

By Mr. MacIntyre:

Q. In other words, it is not a principle that you 41552 apply without knowing what the facts are?

A. That is correct.

Q. In a particular case?

A. That is correct.

Q. In an instance of reciprocal dumping when you do know what the prices are, and you find that prices instead of being lower are at the prices that prevailed in the markets into which the goods are dumped, by what measure then do you determine—by what standard of measure do you determine whether or not there is actual dumping or an absence of it?

A. Well, I thought we had agreed that for the purpose of discussion this morning dumping occurred when the price at which producer at point "A" sold at point "B" was less than the prices he was getting at point "A." That is, as far as I know, is the sole determinant of dumping as we have defined it this morning.

Q. Well, let us take a concrete example, since you do not agree with the assumptions that I stated.

A. Well, I am sorry; if you have stated an assumption to which I have not agreed, I would like to have it restated. I think I did not—

Q. I will state another, Professor.

Take a Belgian cement manufacturer. He has 40 cents

ocean freight between Belgium and New York. He ships cement into New York, selling it there at $1.40, on
44553 which he recovers in the Belgium market, or Antwerp, say, $1 on cement that he sells in Antwerp, he realizes $1.50 from those sales. The price in New York is his laid-down cost of his purchases in New York, is exactly the same as the price paid for competing products there.

Is that dumping?

A. Yes, I think that is dumping; that is, he is netting $1 for the commodity that he sells in New York, and $1.50 for the commodity in his home market.

Q. But his delivered cost to New York, the customers, is no different than the cost would be if they bought a competing product?

A. Yes, that is the way we agreed to define the term for this morning. As I say, Mr. Viner used it in two different senses. He said he would say, or did say that would not be dumping, but I am perfectly willing to agree for this morning's discussion that that is dumping.

Q. Now, if one of these competing manufacturers in New York shipped to Antwerp a boatload of cement at the same time, and realized in New York a return of $1 per barrel, paid ocean freight of $1, and sold in Antwerp at $1.40—that is, ocean freight of 40 cents a barrel, and sold in Antwerp for $1.40, but at the same time realizing in New York on their sales there $1.40 a barrel, would they be dumping, or not?

A. Yes, if I understand the circumstance that
44554 you have set up, that would be dumping.

Q. And that combination would be a case of reciprocal dumping?

A. If done simultaneously it would be reciprocal dumping, yes.

Q. And the standard that you look to for the purpose of determining whether there existed dumping, and by what amount, was the return, the net return of those two shippers; is that correct?

A. I would say the net return of each shipment separately.

Q. That is the only way that you can determine whether or not that there is dumping in international trade or domestic trade?

A. As we defined the term for our purposes this morning, yes, the only way I can see.

Q. Professor, you have frequently, on your direct examination, stated that a group of individuals would do various things, and you could explain their doing these various things as their acting in their self-interest. Do you recall?

A. Yes.

Q. You have said that you could explain them as acting in individual self-interest?

A. I have not quite said that, Mr. MacIntyre, I think, at any point. I have said that to me there were many situations where self-interest seemed adequate to explain.

44555 Q. Or did not necessarily?

A. Action of individual's own self-interest seemed adequate to explain.

Now, I have not said that I had direct proof of any of these cases that self-interest was the entire explanation.

Q. Well, Professor, do you agree with this statement: "It is reasonable to explain acts or courses of action of a number of sellers as an expression of self-interest, and at the same time explain the same acts or course of action as an expression of operation of collusive arrangements"?

A. I think you could find equal instances where one explanation was as reasonable as the other, not having direct evidence on either.

Q. That is, you not having made a personal investigation you could accept either?

A. Yes. I say I think you could find instances where that would be true.

Q. Now, when you attempted to measure in your mind for the purpose of determining whether or not competition had been lessened in the cement industry; that is, price competition; you looked to some possible substitute for the present pricing method; do you recall?

A. Yes.

Q. But I believe that both you and Dr. Griffin agreed that one means of determining whether price com-
44556 petition had been lessened would be by the historical record of the industry itself, where available?

A. Again, if I understand what you mean, I should agree that you mean by the historical record the facts that have developed in the industry. I think those are the only things that will give direct testimony or proof of what has happened in that industry.

Q. That is, you would look to that where available for the purpose of determining whether price competition has or has not been lessened?

A. Yes. I would look to the facts of the industry, certainly.

Q. And if you had available to you historical record of price movements, and the price policies of the individuals in the industry over a period of years, disclosing either difference in prices or uniformity in prices of one period as against another, you would like to look to that?

A. Yes, I would consider—

Q. Have you looked to such things with respect to the cement industry before you came here to testify?

44557 A. Of course, Your Honor, that is not the question. The question is if I at any time looked at the facts in the cement industry. The answer is "yes," I have looked at certain facts in the cement industry one time or another.

By Mr. MacIntyre:

Q. You mean as to the early periods of price movements and price quotations at and about the time that they started the use of the so-called basing-point price system in the industry?

A. Well, I gave on direct or cross-examination the list of some things—the secondary sources I have read on this subject. I think it follows almost as a truism I have seen some factual statements about the industry.

Q. Did you read the history of prices in the industry; that is, of that period; and compare it with the price history of this period as the record in this case disclosed?

A. In part, undoubtedly, but not, I would suppose, completely because I certainly have not read the entire record in this case.

Q. You did not read that portion of the record in the form of Commission's exhibits disclosing wide differences in prices in cement at that time, just about the time

44558 that the basing-point pricing method came into effect?

A. Well, I have seen some of that evidence. I cannot at all be sure I have seen it all, and I would suppose I probably have not.

Q. Now, in your discussion on the question of the merits and demerits of a uniform f. o. b. mill price in this industry, you stated that that would hinder the meet-

ing of peak demands without increasing local production facilities which would in turn increase the cost from which society could not escape in times when they had slack demand.

Have you taken into account that, in connection with making that statement, that the Lehigh Valley with all of their freight absorptions in their shipments into other districts in both slack and peak demands has now a productive capacity of some four or five times that needed for the district in which the Lehigh Valley is located?

A. I have not taken into account in any of my answer that particular fact, because it was not put in the hypothesis in such specific terms as that. There was before me, as in the hypotheses, a statement that at times, and I have forgotten the exact wording, but my impression is that perhaps for considerable periods of times there was unused capacity in some of the mills, and some of the districts. I have also taken into account the further fact, the assumption that was put before me, that freight is a heavy part of delivered cost, and that cement
44559 rarely moves over a maximum distance of two or three hundred miles because of that fact.

Q. Well, under an f. o. b.—that is, uniform f. o. b. mill system of pricing, can you conceive of any manner in which a local mill is, a mill at a point where there is only one mill, could secure unto itself a local monopoly except in so far as its efficiency permitted it to make prices lower than any of its competitors could make them and this willingness to exercise and express its efficiency in making its prices?

A. Well, I can—I think I understand the question—and I should say that no mill can exercise its monopoly power beyond the point, that is, by reason of its price, beyond the point where mills located elsewhere will intrude into the first mill's territory. That is to say, there is no lack of an upper limit. There is a positive upper limit to the monopoly price that a mill could place based upon the willingness of other mills to so set their mill nets to which they add freight that they might intrude into that territory. That becomes, you see, a factual question. That does not say at all that there is not some monopoly opportunity, and by that I mean an opportunity to sell at a price which more than covers total average costs; a monopolist, to an economist, is expected to sell a

quantity, such that the marginal revenue equals the marginal cost, but the marginal cost is less than the total average cost.

44560 Q. Well, he could exercise monopoly only in so far as efficiency or the advantages of his efficiency over and above all of his competitors would permit him to do so; is that correct?

A. That is correct, in any case of this sort of regional monopoly that we are talking about.

Q. Now, coming to this optional f.o.b. mill system that Mr. Leisure asked you so much about on direct at page 44324, you have stated that that whether the option was exercised for f.o.b. mill purchases or delivered price purchases you could not see that it would make any difference in the degree of competition between the original sellers. Do you recall that statement?

A. I would like to see the context in which I made the statement. I do not recall it exactly in those words.

(Mr. MacIntyre hands transcript to the witness.)

A. Yes.

Q. You do not think that in instances where one producer sold f.o.b. mill with advantages to his customers, that another seller selling f.o.b. mill did not give to his customers, would result in any additional competition between the two producers?

A. You still have two mills. You still have them meeting each other's practices and prices.

Q. Practice but not price, Professor.

A. Well, if the practice and price is not met, one of them makes no sales. If the most favorable combination of practice and price from the standpoint of the

44561 buyer is not met, then the person who does not meet it makes no sales in such operation as this.

Q. Isn't that the operation of competition, of one getting the business over the other because of the low prices?

A. That may or may not be the operation of competition. If we have to go back to our assumptions of perfect or pure competition, complete indifference of buyers, and you have as an expected result under those assumed conditions that there will be an exact mathematical division of sales among the various sellers, one seller will not get all the business. It is a matter of indifference to the buyers and mathematically, statistically, over a period of time you expect business to be divided between the group of sellers.

Q. But when one should make a lower price or give an advantage, that would be competition, wouldn't it?

A. That might be an act of competition, and it might be met by the other competitors, in which case you return to the same division of patronage as you have before. Now, you set up a case where you have the same number of sellers under two circumstances. You have those two sellers dividing the business on the basis of identical practices and price. You have a degree of competition resulting from that situation. Now, you ask me to assume that they have changed their practice of price, is there more competition? No. You still have the two sellers meeting the market situation.

44562 Q. They change their practice, Professor, but one has an advantage over the other which one does not have, cannot meet.

A. Oh.

Q. And the one that does have the advantage makes all possible use of it.

A. Oh, I see. I had missed that assumption that the other one could not meet it. Therefore, I should say you had lessened competition. You have run one person out of business but have left one seller.

Q. Lessened competition through the operation of economic advantages and through the operation of competition itself; is that correct?

A. Well, I should say that is always the way we get into a monopoly position, is by the operation of advantages and the acceptance of those advantages, we get into a monopolistic position.

Q. And the operation of competition upon those advantages until it places them where they should be?

A. Wait a minute. I do not know what you mean by "places them where they should be." If you mean places them in a monopoly position, and that is where they should be, then, of course, I should agree with you.

Q. Where the economic advantages lie, then I should say.

A. Well, if you are asking me to assume that the economic advantages lie with a monopolist, then the
44563 situation that you have set up places the business with the monopolist who has the economic advantage; correct.

Q. And competition, usually, does that?

A. No, sir. I should say it does not usually do that; rarely does it.

Q. Well, until new capital comes in, it does, doesn't it, Professor?

A. I would very much question that as a factual conclusion. The length of life of competing concerns in whatever business you want to mention indicates to me that wherever we have our approaches to free competition and our approaches to pure competition, the tendency to eliminate competitors until you have only one left serving a market area does not go very far. Firms remain in competition against each other for a long time, and the tendency is not as, at least it works itself out, is certainly not to bring about the situation which you have just described leaving one seller in a market.

Q. Now, in this statement that you made on this page that I have called your attention to, where you say it would make no difference in the degree of competition between the original sellers, you had then a thought there that it probably would have considerable differences in the competition between the re-sellers from those producers, from those sellers, that is the re-sellers who made purchases from these producers?

A. I said that that might occur, yes, and that I could conceive of situations where that would be a reason for the individual cement mill operating in its own self-interest to discontinue running the option. 44564

Q. That is, if some group of organized dealers who did not like it, asked them to do so?

A. That is right, or whether they asked them to or not if he saw his business going down as the result of a new alignment of competition between dealers.

Q. Now, of course, you said in that instance he would probably be acting in his self-interest to do that?

A. Yes.

Q. Can you see that he would be acting in the public interest to do so in a set of circumstances?

A. If you will tell me precisely what you mean by the "public interest" I will try to answer the question.

Q. Well, having—the public interest being centered in the desire to have competition among these re-sellers.

A. I can conceive of this thing that you have described to me resulting in either an increase or an elimination of competition among the re-sellers. I believe I made that

point either on direct or earlier on cross-examination, that this thing you have been describing to me might well result in elimination of all but a single dealer in a wide area. Now, the crux of the matter then becomes, where do you want this competition that you say is in the public interest.

44565 Q. Do you think it is a question as to whether it should be among the re-sellers of cement?

A. I think—I cannot discuss the question until you tell me what you want me to assume as being in the public interest.

Q. Well, would you assume that the freedom of one dealer to secure cement at the mill and carry it to his warehouse at a lesser cost than would be the case if he were compelled to buy only on a delivered price quotation in the public interest if he had a desire to secure it at the lower cost and to re-sell it at a lower cost than he would be able to if he had to pay the delivered cost; that is, the delivered price quotation cost?

A. With those assumptions, and with the further assumption that as a result of that activity the price differentials were not such as to crowd out all other dealers, and then permit this dealer to raise his price to a monopoly level, I should agree. But it seems to me quite possible that this other train of circumstances would occur which, it seems to me, as you have defined the public interest, would not be in the public interest.

Q. You would agree that unless it gave one dealer a complete monopoly that under the circumstances I have outlined that he should be given the option to buy at the mill?

A. Leave out the word "complete" and I should agree with you. I do not know of any complete monopolies.

44566 Q. Now, under either the basing-point system of quoting delivered prices, uniform f.o.b. mill price system or the optional f.o.b. mill price system, your competition, nevertheless—that is, the forces of competition—nevertheless converge upon the mill nets that are received by the producer; is that correct?

The Witness: May I have that read, please?

Trial Examiner Norwood: Read it.

(Question read.)

A. The forces of competition under any method of pricing or marketing converge, first, upon the point where the

product is to be used. From that they run back to the point where the various industrial or production processes take place, each one in turn.

By Mr. MacIntyre:

Q. And take the form there of mill nets that those producers receive?

A. Well, I went through the arithmetic of that the other day.

Q. Well, can't you answer that "yes" or "no," now, Professor, without the same explanation that you gave the other day? Can't we get just your answer and then look to your explanation?

A. The answer is "Not necessarily."

Q. What?

A. The answer is "Not necessarily."

44567 Q. But usually?

A. Never necessarily.

Q. But usually?

A. Well, perhaps.

Q. Now, Professor, I want to put to you another question:

Assume that continued maintenance of a method of price quoting depends upon the ability of a group of producers to prevent a purchaser who buys for re-sale in competition with others from securing and selling a commodity at a price less than the prices which his competitors buy and sell except for the method of price quoting used by the mentioned producers.

Now, in your opinion as an economist, is that method of price quoting, if maintained, preventing competition from accomplishing anything that economists expect competition to accomplish?

The Witness: I will ask that that be re-read.

Trial Examiner Norwood: Read it.

(Question read.)

A. There is one phrase there that I want to ask you the meaning of. You say "except for the method of price quoting." You mean "except,"—is that synonymous with "except by" or under the method of price? What does that "for" mean?

By Mr. MacIntyre:

Q. Well, it means the same thing "as on account of" in this instance, or "but for."

44568 Trial Examiner Norwood: Read the question again.

(Question read.)

The Witness: I still am not clear as to what that phrase "except for" means in there, but I would say this anyway, that I do not believe the method of quoting prices in and of itself, without consideration of anything else, prevents competition from accomplishing the things which economists expect competition to accomplish.

By Mr. MacIntyre:

Q. Suppose, however, that the maintenance of that method of price quoting depends upon these circumstances that I outlined to you in that hypotheses. Would it then, if maintained, prevent competition from accomplishing the things that economists expect competition to accomplish?

A. I do not believe so. That is to say, if you haven't set up a specific method, if the industry agrees that they will quote prices, either C.O.D., net 30 days, 2 percent discount for cash, or f.o.b., net 30 days, 2 percent discount for cash, they have agreed on that one thing. That in itself, it seems to me, need not and would not, that is the only circumstance that we are considering, need not and would not prevent competition from accomplishing the thing which an economist expects it to accomplish.

Q. Professor, you are not answering the question that I put to you in that set of assumptions.

44569 Now, I want to put that set of assumptions to you again, and I do want an answer, and a direct answer, to that question, if you please.

Assume that continued maintenance of a method of price quoting depends upon the ability of a group of producers to precent a purchaser who buys for re-sale in competition with others from securing and selling a commodity at a price less than prices at which his competitors buy and sell except for the method of price quoting used by the mentioned producers. Now, in your opinion as an economist is that method of price quoting, if maintained, preventing competition from accomplishing anything economists expect competition to accomplish?

A. Why, no.

Q. You do not think it prevents anything?

A. If I have followed your question, I certain do not. Now, grain is bought under certain rules and regulations on the Chicago Board of Trade, and all buyers buy at

the same price at the same moment, or essentially so, certainly, even if they did not absolutely so they come awfully close to doing it. That would not prevent competition from accomplishing the things which economists expect it to accomplish.

Q. Your answer, then, to that question is "No."

A. My answer is "No."

Q. Now, on direct examination Mr. Leisure read to you a certain portion of the testimony of Dr. Fetter, in
44570 which he stated that Dr. Fetter had testified that in his opinion cooperation was required to maintain basing-point practice in an industry. You disagreed with that opinion.

Now, I ask you what basing-point practices have you studied in any industry where cooperation, to your knowledge, was not present in connection with the maintenance of the system itself?

A. I wonder if you are correctly quoting Dr. Fetter's testimony in the question that was asked him, and the question that subsequently was asked me. I do not believe the word "cooperation" was the governing word.

Q. "Cooperation tantamount to an agreement."

A. Well, that is quite a different thing.

Mr. Leisure: What page?

Mr. MacIntyre: Off the record. 44110.

By Mr. MacIntyre:

Q. Well, even with that amendment to the question, I still ask you the question, Have you studied the operation of a basing-point pricing system in any industry where, to your knowledge, there was not in existence in that industry cooperation which was tantamount to an agreement in that industry?

A. Are you trying now to see whether I could qualify as a factual witness in some industry other than the cement industry?

Q. I just want you to use this same basis for your
44571 answer to my question now that you used in answer to Mr. Leisure's question on that page, 44110, and page 44111.

A. It seems to me, again, you are asking me whether I consider myself a factual witness in some industry other than the cement industry.

Q. Well, you disagreed with Professor Fetter there, and, of course, the record shows that he made personal in-

vestigation of a number of industries that use the basing-point practice.

Now, I am asking whether or not you had an equal basis for your disagreement with him that he had for his opinions that he gave?

Answer the question, please.

A. I think I have, yes.

By Mr. MacIntyre:

Q. What industry is that, Professor?.

44572 A. I would say the flour milling industry, as one illustration.

Q. And do they use a basing-point system that is similar in character to the basing-point system used in the cement industry?

A. Similar, not identical.

Q. And you are here now testifying to your knowledge they have not had in that industry cooperation tantamount to an agreement?

A. Yes, that is my opinion.

Q. I am asking you for your knowledge now.

A. My knowledge is not absolute. I have no direct evidence that there is cooperation tantamount to an agreement. I have considerable evidence which in my opinion justifies the conclusion that there is not cooperation tantamount to an agreement.

Q. Do you know that representatives of that flour industry denied before the Wheeler Committee that they use the basing-point method in their pricing industry,—do you know that?

A. Yes, I know that.

Q. Yet you think they are wrong?

A. I think it becomes a matter of definition of terms and degree of similarity to something described as the basing-point system in hypothetical questions.

Q. Now, yesterday afternoon, Professor, you told me that you could not see any reason why a group of

44573 producers, or any group of sellers, would attempt to engage in practices that would lead to identical delivered price quotations. Do you recall that?

A. I am not sure that you are quoting me correctly. I think we included in that statement identical delivered prices, rigid over a particular period that you have mentioned.

Q. You cannot see why that they would do that according to a plan or according to cooperation among them?

A. No.

Q. Why not?

A. Well, because it seems to me that all the history of industry and prices indicates that if the prices could be—price of any commodity I have studied—could be modified at will by agreement without fear of price wars, and so on, and retaliation, there would be every reason to expect the price of any one commodity to move either up or down with changes in the general business conditions that confronts that particular industry.

Q. You have recognized, haven't you, Professor, that business men do attempt to cooperate and work out plans for making prices identical?

44574 A. I have made some study of the efforts that were made by representatives of industry in connection with N. R. A., at which time many of them thought they wanted a control over prices.

By Mr. MacIntyre:

Q. Over a long period of time?

A. They wanted a control over prices.

Q. Over a long period of time?

A. Over a long period of time, but I see nothing in that record which suggestes that given that control they would have made the prices rigid over a long period of time, which is quite a different thing.

Q. But with their purpose in mind to make it identical, with that of their competitors or so-called competitors?

A. I think that probably that was one of the items in their plan, but I doubt very much, nor do I find any evidence in the study I have made of the N. R. A. hearings on various industries that any of the group industry groups had in mind a price fixed at a different level regardless of other prices over a period of time.

Q. But for the purpose and with the effect of increasing the prices that they arrived at in their identical quotations; is that correct?

A. Not necessarily. I do not think all the groups
44575 that discussed this industry control under the N. R. A. had quite that idea. They did, I think, want a higher degree of stability in some industries than had existed before.

Q. And higher prices?

A. How is that?

Q. And higher prices?

A. Well, I suppose everybody wants higher prices if he can get them for what he sells.

Q. Isn't that what this cooperation and planning, and identical prices, led to during this period of time where men were planning—that is, so-called competitors—so planned and worked out cooperation?

A. In some industries that was true. I think it was not universally true.

Q. Wasn't that true in cement, according to your study of it as of that period of time?

A. Now, let me see. You are asking me whether the thing we have just been talking about, namely, the industry operations under N. R. A.—

Q. And subsequently.

A. —did not actually raise the prices.

Q. During Code and post Code periods, yes.

A. I cannot be sure of my facts, sure enough of my facts on that point to answer the question.

Q. Well, then, I would like to read to you a state-
44576 ment, Professor, and see if that refreshes your memory and recollection, and see whether or not that you agree with it in reference to this cooperation that followed N. R. A.

"The effect of the new 'cooperation' of competitors are reflected in the prices paid for some lines of goods purchased by the Twin Cities and the University. Although the situation varied in different lines, the percentage of identical bids increased very greatly in the short time that elapsed between the pre-Code and post-Code periods. The post-Code period has been marked by rapid increase in identical bidding and by smaller variations between the highest and the lowest bids. The methods of clearing prices and the local group meetings of competitors in the post-Code periods are the explanations of this narrowing or elimination of bid differentials. Well developed cost systems and standardization in management methods would tend to reduce the disparities in price quotations, but these are not the reasons for the conditions of 1934. As a result the futility of the bidding system as a means of effecting economy of purchasing by governmental units has been impaired. At a time when declining revenues and relief needs are already placing abnormal burdens upon governmental units the impairment of the bidding system

is increasing the governmental cost and curtailing their services."

And then followed that with a showing that cement prices,—an index of cement prices,—based on 100,
44577 for 1926 were 91.8 for 1929, 91.8 for 1930, 79.4 for 1931, 77.2 for 1932, 86.1 for 1933, and 93.2 for 1934.

Do you recognize those as statements and publications of yours?

A. No. This is a statement in a publication—the statement written by Professor George Filipetti of the University of Minnesota; not by me.

Q. Well, he was co-author—

Mr. Bond: Let him finish.

Q. —with you in the publication, wasn't he?

Mr. Bond: Let him finish his answer.

A. No, he was not. This publication has two separate articles in it, one of which Professor Filipetti was author of, the other of which I was author of. I had—

By Mr. MacIntyre:

Q. You disclaim any responsibility for the statement I have read?

A. I disclaim any responsibility for the statement you read.

44578 Q. You read those statements before it was published in a publication of which you were co-author of the entire publication, didn't you?

Mr. Leisure: I object to the question. The witness has just stated he was not co-author. Now, Mr. MacIntyre—

Trial Examiner Norwood: Let us get the facts.

Mr. MacIntyre: Please read the question to the witness.

Trial Examiner Norwood: Did you approve of that in any way?

The Witness: I was answering that question—I was on the editorial committee that approved for publication all of this series of bulletins. That, of course, does not mean that I necessarily subscribe to the opinions expressed. I approved it as a member of the committee for the purpose of publication.

Trial Examiner Norwood: The motion is allowed.

Mr. Wooden: Your Honor, I submit that when the witness has thus admitted his responsibility for the publication of the statements, even though he was not the original author, that the motion should not be allowed, and it is

admissible as showing that the witness has taken a
44579 course of action in approving after reviewing such statements, and it is inconsistent, of course, with, actually, his testimony.

By Mr. MacIntyre:

Q. I show you, Professor, a document which has
44580 been marked for identification as Commission's Exhibit 3265-A, B, C, D, and E, and ask you to state if you recognize those as portions of a publication entitled "The Economic Effects of the N. R. A. and Regional Analysis by George Filipetti and Roland S. Vaile," that is, yourself?

Mr. MacIntyre: Now, will you please read the question.
(Question read.)

A. I do, but I would further call attention to the fact that on an unnumbered fly-leaf there appears the subcaption "Part I, Manufacturing Under N. R. A., by George Filipetti." Following page 64 there is another fly leaf marked "Part II, Merchandising under the N. R. A., by Roland S. Vaile."

By Mr. MacIntyre:

Q. I believe you have already stated for the record that you were on a committee that approved the publication of all of these portions which have been marked for identification as Commission's Exhibit 3265-A to E?

A. That is correct.

Q. And now I want to ask you, Do you disagree with any part of the publication?

A. I can neither agree nor disagree with the factual material in the publication because I did not make firsthand study of it; that is to say, with the pages as marked.

Q. You collaborated with your co-author on this
44581 work concerning its scope, that is the scope of the work and the plan of it, and the matter that was to be included in it, did you?

Mr. Leisure: Now, just a moment.

I object. Mr. MacIntyre persists in putting into the witness' mouth by form of question the words that he was a co-author, whereas the witness has repeatedly stated on the record that he was not a co-author.

Trial Examiner Norwood: The objection is overruled. Let him tell us about that.

A. The answer to your question is "No."

By Mr. MacIntyre:

Q. You did not collaborate with this—

A. Not in the preparation of Part I of that bulletin.

Q. Or any part of it?

A. No. Part II was my own work, and I did not collaborate with Professor Filipetti on that.

Q. Who were on the committee that approved this publication in addition to yourself?

A. As a matter of fact, I think this was approved by two different committees. It may take a little time, Your Honor, to get this thing straight.

Q. Just the committee, now, that you were on.

A. I was a member of both of them.

Q. Yes.

44582 A. There was an editorial committee of the Employment Stabilization Research Institute.

Q. How many?

A. Which approved for publication this bulletin. On that committee, Mr. Russell A. Stephenson was chairman. Professor Chapin, professor of sociology at the university, and myself, were the other two members. This bulletin was published, however, not in these series of publications issued by that organization, but in a series on economics and business, for which the editorial committee again was Russell A. Stephenson, chairman, Professor Roy G. Blakey, and myself.

Q. Three members of the committee, one of which—

A. I was a member of each of those committees, and both of these committees approved this publication.

Q. And it was published in accordance with that approval?

A. That is correct. I will tell you who paid for the publication if you want me to.

Q. That is not necessary, Professor. Thank you.

Trial Examiner Norwood: Read that statement.

(Witness' answer read.)

Mr. MacIntyre: I would like to ask the Professor a farther question:

By Mr. MacIntyre:

Q. Professor, what position have you taken in your teachings in your classes as to whether a basing-

44583 point pricing system in the cement industry was collusive or competitive in any respects?

A. I can only answer that question, Mr. MacIntyre, and Your Honor, in terms of the way I do my teaching. I have most frequently asked my students to debate the various merits of the basing-point system, and have asked the same students frequently to take first one side and then the other, and have tried to get them to arrive at their own conclusions or opinion about it rather than stating my own opinion. I do not recall that I have ever in my classroom discussions stated whether or not in my opinion the basing-point system in the cement industry, or any other industry, was collusive.

Q. It is your testimony that you have never indicated to your students whether or not you felt that it was collusive in any respect?

A. That is true, to the best of my recollection at the moment.

Q. Have you distinguished in your teachings to your students the steel industry, which you say in your "Market Organization," your publication "Market Organization," is monopolistic in character, the cement industry in any respect?

44584. The Witness: Well, I would ask you, Mr. MacIntyre, whether you can cite me the place where I have said that the steel industry is monopolistic.

By Mr. MacIntyre:

44585 Q. I think you described it as being near monopoly.

(Mr. MacIntyre examines some papers.)

A. Well, never mind. I can answer it. I can answer the question in this way: Of course, I have distinguished many characteristics and differences between these two industries.

Q. Well, anything that would lead to a different fundamental distinction between the industries from the one that is from the characteristics that you attach to the steel industry near the top of page 83 of your book "Market Organization," in which you state monopoly or near monopoly characterizes other markets; in the making of steel, for example, there is little buying by middlemen for resale, and so on.

Mr. Leisure: I object to that part of the question where Mr. MacIntyre asks him about the marketing of steel.

Trial Examiner Norwood: The objection is overruled.

By Mr. MacIntyre:

Q. Have you distinguished the cement industry in your class from that characteristic of the steel industry?

A. Yes. I will go on with this reading: "In the marketing of steel, for example, there is little buying by middle men for resale."

Now, I have pointed out that the cement industry operates quite differently from that.

Q. Will you read on?

A. "Producers sell to users and there is no re-
44586 versing of the prices as there is among the middle men in the grain business."

There is specific reference there, and there is, of course, some reversing I pointed out in cement.

Q. Will you now read the statement at the bottom of the page, of what you said about the cement industry in that same connection, the beginning of a paragraph, the bottom of that page, Professor?

A. There seems to be nothing about the cement industry on the bottom of that page.

Q. The bottom of page 165.

A. This is a paragraph that comes under the general heading of "Basic Pricing Systems in Vogue."

Q. In that you have discussed cement and steel; is that correct?

A. Just a moment and I will see. You have an advantage over me. You have read this book much more recently than I have.

(The witness is looking at the book.)

In explanation of that statement I will say that we used it as a textbook for freshmen at the University of Minnesota, beginning 1930, but we have not used it in the last five years, so I have not read it since that time.

Q. You seek to teach freshmen economic truths, though, do you not, Professor?

Mr. Leisure: I object to that question.

Trial Examiner Norwood: The objection is overruled.

44587 Mr. Leisure: As being facetious.

A. Truth, sir, is an abstraction that I know not the meaning of.

Yes, I have been discussing, in a very elementary and brief way, the basing-point system as it worked out at one time at least in steel.

By Mr. MacIntyre:

Q. What do you teach your freshmen about the cement industry based upon that book, as shown on page 165, near the bottom?

A. Well, the quotation which you have marked is the pricing system used in the Portland cement industry is somewhat different and leads to a different sort of uniform price.

Now, you asked whether—a moment ago—whether I pointed out some differences. Obviously I have.

Q. And where did you get the information that you used in places that led you to place that statement in that book?

A. That I can no longer answer. I do not recall what of the material that is now in existence was available to me in 1930 or 1929.

Q. The Federal Trade Commission reports were not available to you at that time?

A. There was one earlier Federal Trade Comm[illegible] report at that time, was there not, if my memory is correct?

Q. No, no.

Now, Professor, I want to ask you when, in re
44588 sponse to Mr. Leisure's questions, which were based upon certain assumed facts, and you testified from the facts as assumed, that you would not draw an inference of the presence of the operation of collusive arrangements, what you really meant was that such state of assumed facts would not necessarily give rise to the drawing of an inference of the presence or the operation of collusive arrangement; is that correct?

A. Well, of course, I have gone further than your paraphrasing. I said that it seemed to me most unlikely—

Trial Examiner Norwood: Now, could you just answer the question?

The Witness: The answer is "No."

44589 Q. I asked you whether, when you answered Mr. Leisure's question based upon certain assumed facts, and you testified that from the facts as assumed you would not draw an inference of the presence of the operation of collusive arrangements, you really meant to say that such a statement of assumed facts would not necessarily give rise to the drawing of an inference of the presence or operation of collusive arrangements.

A. No. I meant a much stronger thing than that. I meant that there were other possible explanations, which, in my opinion, were much more persuasive than the explanation of collusion.

Q. Well, you mean to replace the word "necessarily" with the word "likely" or "unlikely"?

A. How does that clause then read?

Q. That such a state of assumed facts would not likely give rise, in your opinion, to the inference of collusion.

44590 A. I would use even a stronger word than that, Mr. MacIntyre.

By Mr. MacIntyre:

Q. What?

A. In my opinion, it is not at all reasonable to expect that the cause rested in collusion.

Q. That is, if you were to just assume the hypothetical industry that Mr. Leisure put before you.

A. That is correct.

Q. And nothing else.

A. That is correct.

Q. And, of course, you told us that you did not base your answers in response to those questions on anything else than the assumed facts put before you.

A. That is correct.

44591 *Redirect Examination by Mr. Leisure.*

44592 Q. Now, on page 44390 of the record you told Mr. MacIntyre that if a company added salesmen to its force to enter new territory that might not be price competition. I may not be paraphrasing exactly, but you correct me if I am not.

When you were discussing that subject with Mr. MacIntyre, as I have indicated, were you referring to new territory in which this particular company had not sold in competition with other companies already selling

44593 there, or were you referring to new territory in which no company had previously been selling? I just want the record to be clear.

A. Yes. Well, in connection with non-price competition, that is to say, broadening the entire market, I would say that the sending of new salesmen into new territory in which no sales had been made before could be considered, and would come under my definition of non-price

competition, we are widening the entire use of consumption without attempting to use a change in the price-quantity relationship.

Now, in entering a market not previously entered by this manufacturer, but already entered by other manufacturers,—that is, the sending of new salesmen to that market, would, in my opinion, be a case of price competition.

44594 Q. You were asked yesterday, Professor Vaile, whether you would give in an industrial field any example of an industry in which price had been identical and rigid for as long a period as he assumed was true in the case of cement.

Let me ask you now whether you would expect 44595 identical prices unless the product was homogeneous?

A. Not unless it was substantially homogeneous.

Q. And in the industrial field are there many or few instances of homogeneous products?

A. There are relatively few. Very few, I should say.

Q. You also discussed the question of consumer goods with Mr. MacIntyre. I do not want to take the time to cite the record, but just let me ask you this:

In the field of consumer goods, can you give us any instance of identical prices and rigid prices over a considerable period of time?

A. Well, of course, milk is one of the best illustrations. There have been cases of identical prices in a single market rigid for a while, at least. There are not many, because there are even fewer illustrations probably of homogeneous commodities among consumer goods than among industrial goods.

Q. On page 44521 of the record Mr. MacIntyre asked you the following question:

"In your study of American industries, can you recall that you have ever called upon such rigidity in price when general economic conditions were changing, as was the case over that period of four or five years?"

Mr. Bond: That is obviously an error in the transcript.

44596 Mr. MacIntyre: I think it should be "noted" instead of "recall."

Mr. Bond: It says "called upon."

The Witness: Come upon.

Mr. Bond: Come upon.

Trial Examiner Norwood: Let the record be corrected as agreed on.

Mr. MacIntyre: As I remember, I did use the word "recall."

By Mr. Leisure:

Q. You answered it, Professor Vaile, restricting the answer to "under a rigid interpretation of the question," and you started to say something about a more liberal interpretation of the same question. Would you just complete your answer, if you will, please.

A. Well, if we take other periods of price fluctuations that are not identical with the period in question—that is what I meant by the more liberal interpretation of the question—there are price fluctuations in general that are somewhat similar. There is brought together in Frederick Mills' "On the Behavior of Prices" a large amount of information regarding rigidity and frequency of the price change, and in that study—I can't remember the details of it—there are numerous instances of individual commodities remaining at a rigid price for a considerable period of time, sometimes as long as five years
44597 or longer. I have no specific facts to cite. The evidence gathered from official Government sources is there.

Q. While you have the record there before you, Professor Vaile, will you look at page 44363 of the record, where at the end of the first answer on that page your answer reads as follows:

"My monographs, I should think, are a very minor part of some dozen or more monographs I have published—have dealt with advertising."

Will you state whether or not that is a correct transcript of your answer?

A. I believe it is not.

Q. Will you tell us what the correct statement of your answer should be?

A. "My monographs,—I should think a very minor part of my series of some dozen or more monographs that I have published has dealt with advertising."

Q. Let me call your attention to the first answer on page 44120, lines 9 to 11, in which the last sentence is cut in two in the middle and finishes as if it were a new sentence: "That demand fluctuates from time to time." As

that reads is that a correct transcription of your answer to that question?

A. No. This is not a correct transcription.

Q. Will you make the correction, please, for the record?

A. On line 9 the period should be omitted and a
44598 dash inserted; then on line 11 the word "That" should be written with a small letter.

Q. Making it all one sentence?

A. That is correct.

44601 *Recross Examination by Mr. MacIntyre.*

Q. Professor, when you answered Mr. Leisure on redirect that you did have in mind four or five industries of commodities that were offered by groups of sellers for sale, in which there was absolute rigidity in price
44602 and uniformity in price over a period of time, what commodities did you have in mind?

A. I do not believe I answered Mr. Leisure quite that way, did I? I called attention to the fact that I had in my studies seen reference and seen statistical evidence of such a matter, and I said quite specifically on redirect that without refreshing my memory I could not say what specific commodities they were.

Q. You said something about four or five commodities.

A. I do not recall using such an expression. I had no intention of making that a factual statement, except to say that I have seen those figures brought together and a study made of the frequency of price change, and there are a number of commodities where conspicuous rigidity has existed. Without refreshing my memory I could not discuss those commodities.

Q. But even as to those four or five, you have no knowledge as to whether uniformity accompanied the rigidity in the four or five instances?

Mr. Leisure: I object. The witness was not limited to four or five.

Mr. MacIntyre: The record will show on that.

Trial Examiner Norwood: Objection overruled.

A. Well, on the group that I was talking about, however large it was, I have also seen studies made of uniformity, and I have in some instances compared uniformity of price

at a moment of time and rigidity over a period of
44603 time for specific commodities. But, again, I cannot testify this morning factually about those cases.

Q. You can't give us any indication as to what commodity was involved?

A. I would object to attempting to answer factually without refreshing my memory.

Q. Well, how many commodities are there in the study you were talking about?

A. Well, I believe about 156 or 167 different commodities.

Q. And that included steel?

A. It included not only steel but various specific subdivisions.

Q. Cement?

A. It included cement, yes. It included trowels. That happens to pop into my mind at the moment. It included a number of agricultural commodities. It included both industrial goods and consumer goods.

Q. And it included a number of products of industries using basing-point methods?

A. It included some that used the basing-point method, yes.

Mr. MacIntyre: I would like to ask that another page of this book, which has been marked for identification as Commission's Exhibit 3265-A to E, be marked—it is page 101. I would like to ask that it be marked 3265-F.

Trial Examiner Norwood: It may be so marked.

44604 (The page of the volume referred to was marked for identification "Commission's Exhibit 3265-F.")

By Mr. MacIntyre:

Q. Professor, I show you Commission's Exhibit, for identification, 3265-F. You recognize the material on that page as your writings (handing book to the witness)?

A. Yes, that is part of the material that I have written.

Q. That includes the statement:

"Ever since the turn of the century, or even before, there has been a growing tendency in this country toward authoritative control of certain parts of the economic system. In numerous instances the controls have produced resistance to fluctuation in one or more series of prices. As a result, anything that affected business in general had a more violent effect, relatively, on those prices that were still free to move than it would otherwise have had. The

N.I.R.A. is a case in point. It provided an artificial, authoritative rigidity to wages and to certain prices. This action increased the risk of those business men whose income is a residual, dependent upon the interplay of costs and prices."

Do you agree with that statement as your statement appearing in that exhibit I have just shown you, marked for identification?

A. You have asked two questions in one. I agree it is my statement, and I still agree with the conclusions in it.

44607 FRED R. FAIRCHILD was thereupon called as a witness for the Respondents, and, having been first duly sworn, testified as follows:

Mr. Bond: In accordance with what I understand is the practice with the Commission, I am presenting this statement of the witness' qualifications and experience. On the basis of this—

Trial Examiner Norwood: Are you familiar with this statement?

44608 The Witness: I think I have seen a copy of it.

Trial Examiner Norwood: Do you swear to the truth of those statements?

The Witness: I do.

Mr. Bond: On the basis of this, with one or two supplementary questions, we will tender the witness as a qualified expert.

I ask that this be incorporated in the record as though the witness testified to it.

Trial Examiner Norwood: The witness testifies to the following statement:

At the present time I am teaching at Yale University in both the college and the graduate school.

I received my college training at Doane College in Crete, Nebr., graduating there in 1898 with the degree of B. A. and then studied for three years at the Yale Graduate School, receiving a Ph.D. in economics from Yale in 1904.

I have been teaching in the field of economics continuously since that time. I have taught general economics, general theory and history of economics, money and banking, and taxation and Government finance.

My present title is Knox Professor of Economics.

In my study in the general field of economics I have given special attention to the economic principles
44609 relating to the subjects of markets and marketing, competition, value, and price.

I have published various articles and books on economic subjects and am the author of a book entitled "Economics," which is widely used as a textbook in American high schools. I am author with two colleagues (Furniss and Buck) of two college economics textbooks entitled, respectively, "Elementary Economics" and "Economics," which are, I believe, the most widely used of all textbooks on economics in American colleges. These textbooks in general economics contain extended treatment covering several chapters on the subjects of markets, marketing, competition, value and price. In addition I have written a large number of articles in the economic field, including articles which deal with problems of markets, competition, price and value.

I am also the author (with associates) of "Forest Taxation" (Report of the United States Forest Taxation Inquiry). This book contains a very extensive and elaborate discussion of the economic principles of price and value under various conditions of competition.

I am a member of the American Economic Association, and at one time was Vice-President. I am a member of the National Tax Association and was formerly Vice-President and President of that Association. At one time I was a member of the American Association for the Ad-
44610 vancement of Science, and was Vice-President in charge of the section of that society that deals with the social sciences.

I was associated with the defense of the old Cement case in the preparation of economic testimony and assisted Professor T. S. Adams by compiling extracts from a large number of writers on general economic theory dealing with the definition and nature of competition, demand, supply, market price, et cetera. From this material Dr. Adams testified as a witness in the case. Dr. Adams died several years ago.

I have served as a consulting expert in taxation and Government finance for the United States Government, the Territory of Hawaii, the State of New York, the Republic of Colombia, and the Republic of Santo Domingo. I have also testified as an expert witness on general economic principles in various court cases.

Direct Examination by Mr. Bond.

Q. Professor, were you associated with the de-
44611 fense of what has been referred to as the Old Cement case in the preparation of economic testimony?

A. Yes, sir; I assisted one other expert witness in that case by looking over the writings of many economists with respect to certain questions of price and value, markets, competition, and so forth.

Q. And that witness was Professor Adams?

A. Professor T. S. Adams.

Q. And he testified in the case on the basis of the work done by you and others?

A. Yes, I understand he did.

Q. Is Dr. Adams still living?

A. No, he died some years ago.

Mr. Bond: Now, we tender the witness as a duly qualified expert in the field of economics.

Mr. Wooden: There is no objection on our part to accepting him as a duly qualified expert in the general field of economics. If it is in anything else, any specialized field in economics, particularly if it is a specialized field of the basing point system, then I think there would be some objection.

Trial Examiner Norwood: Well, the witness testified that he has given special attention to the economic princi-
ples relating to the subjects of markets, marketing, com-
petition, value, and price. I shall accept him as an
44612 expert on those subjects.

By Mr. Bond:

Q. Professor, the question that I am about to ask you is one that we will describe here as my long hypothetical question, and whenever reference to this is hereafter made I will ask you with reference to the assumptions that I shall now state.

Let us assume that the following description is a statement of the conditions of the cement industry as of the present day, July 1, 1937, that being the date of the complaint in this case.

Q. Cement is a homogeneous commodity. There are approximately 150 cement mills, scattered throughout the United States, owned by more than 50 separate independent companies. Cement mills usually have large capaci-

ties with large capital investments. The capacity of most mills exceeds the local demand. Freight is a substantial part of the cost of cement delivered to the point of use or resale. The volume of the demand for cement varies in each locality from year to year and month to month. Sometimes there is a large demand in a given market and
44613 at other times there is a small demand in that market. The manufacturers of cement which market their product in any given territory are engaged in a struggle for tonnage.

There are a very large number of buyers, and they are scattered throughout the country. At any point of substantial cement consumption, there are several buyers. Buyers of cement (including dealers, contractors and other purchasers) are well informed with respect to the prices charged and the methods of sale employed by competing manufacturers. Buyers purchase on the basis of the lowest cost at the point of use or resale. For more than twenty years buyers have refused to pay any more for one brand of domestic cement than another. For more than twenty years cement has usually been quoted and sold at destination prices. Buyers of cement normally request prices f. o. b. destination. From time to time some manufacturers have, upon request, made sales to customers f. o. b. mill.

In quoting prices a manufacturer usually takes into consideration the prices which have been quoted by his competitors for delivery at the destinations in question. At any destination the openly quoted delivered price appears to reflect some pattern. The most prevalent of these patterns is the lowest combination of some price base plus actual freight from the basing point. Another pattern appears to exist when the same price is quoted at a number of adjacent destinations (such prices having
44614 sometimes been called in this case flat or zone prices). A third pattern appears to exist when prices radiate from some market area (such prices having been sometimes called in this case arbitrary prices and have been made around some ports to meet the competition of foreign cement, and at other places to meet other competitive conditions). Flat, zone and arbitrary prices do not reflect the variations in actual freight charges.

Fifty or more mills are basing-point mills and about 60 percent of the productive capacity of all mills is located

either at or within a few miles of basing-point mills. These basing-point mills are scattered throughout the country. Each manufacturer can at any time make its mill or plant a basing-point mill. At different times the same mill has been a base mill and a non-base mill. The total number of base mills has varied from time to time. All manufacturers, including those with basing-point mills, shrink their mill nets in making sales at distant points.

Whenever a lower price is openly quoted by one manufacturer, other manufacturers selling at that destination have found it necessary either to reduce their delivered price to meet this lower price or to withdraw from actively soliciting business at that point. It has been the experience of such manufacturer that an open reduction in prices is met immediately by competitors, and that a quoted reduction in prices does not bring a compensating in-
44615 crease in the cement consumed where the decrease is effective nor a compensating increase in the sales of the manufacturer initiating the decline. Each manufacturer has invested considerable time and money in developing channels of distribution, such as dealers and contractors. A mere reduction in price does not ordinarily drive a manufacturer out of a consuming area where it has developed customer good-will. It has been the experience of each manufacturer that an open reduction in price has, from time to time, provoked further reductions in price by competitors. Such open price reductions have sometimes resulted in price wars.

For more than twenty years most manufacturers have regularly broadcast their prices to the dealer trade. In quoting decreases in price a manufacturer usually makes it effective at once and buyers are usually reimbursed for shipments made just prior to the decline. In quoting increases in price a manufacturer usually makes it effective in several days after the announcement is received by the trade. In the event of an increase no sales are made at the higher prices unless all competing companies announce that they are following the increase, and no such sales are made until the quotations of all the companies competing in a given market have become effective. Any manufacturer, no matter how small, can initiate an effective decrease in price.

For more than twenty years dealers and contractors

have been protected on specific job contracts in the
44616 event of an increase in price, and have been given the benefit of the new low price in the event of any decline in price. Upon an increase in price dealers and contractors are protected on spot shipments by having an opportunity to buy any quantity of cement for which they will take shipment within 15 days after the increase has become effective in that market. Various manufacturers have found that they do not sell a substantial quantity of cement at their increased price even if their competitors followed the increase until several months after the increase became effective.

Some manufacturers have quite consistently adhered to their publicly quoted prices and other manufacturers have made sales at reductions from their publicly quoted prices, such sales being intended to be secret prices. Other manufacturers have made sales reflecting special terms or concessions not contained in their open price announcements. The announcements to the trade of these manufacturers which made secret prices or concessions quote a price not below the lowest openly quoted price of any competitors. These secret price cuts often become known to competitors. There have usually been some secret prices, concessions or variations in terms being made by various cement companies. The volume and amount of such secret prices have tended to increase when the demand for cement was small.

Customers often give manufacturers an oppor-
44617 tunity to meet the lowest price available to them whether it is publicly or secretly quoted. Manufacturers have observed that if a special price is quoted to one customer, other customers upon learning of this fact demand similar concessions. When competitors learn of such price concessions they frequently meet such lower prices either by granting similar concessions at the same or other destinations, or by openly announcing a general price reduction which affects a large consuming area. Manufacturers have been shown from past experience that extensive secret price concessions in many markets may result in open price wars.

There have been price wars in the cement industry. In the event of price war prices have been reduced to a level approximating the out-of-pocket costs of production. Price wars continue until some manufacturer takes the initiative in raising prices and his lead is followed by his competi-

tors. The quoted price at any given destination does from time to time remain stable for long intervals except to the extent of changes in freight rates. In some markets there have been periods of time up to three or four years where the lowest quoted price has not changed, except to the extent of changes in freight rates.

Diversions in transit are usually not permitted by manufacturers, and they try to discourage and prevent diversions. Many manufacturers in widely scattered parts
44618 of the United States do not permit dealers to come to their mills and take delivery by truck. Some receive no requests from customers for truck delivery. Some manufacturers allow dealers to come to the mill and take delivery by truck. Such sales are frequently made at the same price as though the cement had been delivered to the dealer's warehouse.

Now, Professor, will you please state whether or not in your opinion as an economist the marketing practices described could logically be the result of an economic development in such an industry?

A. In my opinion as an economist, the conditions described in this question could result as a logical and historical development of such an industry.

By Mr. Bond:

Q. Under the same assumptions, will you state whether or not you consider that the marketing practices as described preclude the existence of free competition?

44619 A. No, sir; I would think not. It would seem to me that these marketing conditions could perfectly well arise under the condition of competition.

Q. And of free competition?

A. Under free competition.

Q. Will you state whether or not the marketing practices as described indicate to you as an economist that they were arrived at by collusion or conspiracy?

A. They would carry no such indication to me.

Q. Professor, let us assume the following description is the general story of the development of the marketing methods used in the cement industry.

The manufacture of Portland cement in the United States commenced in the latter part of the Nineteenth Century. Around 1870 several mills were built in the Lehigh Valley in the northeastern part of Pennsylvania where there was a deposit of a so-called cement rock. Until about

40 years ago, most Portland cement used in the United States was imported from Europe, and moved into the interior from the Atlantic seaboard. Most of this im-
44620 ported cement was sold to distributors f.o.b. dock. The distributor shipped the cement to the point of use, where he resold the cement to the ultimate consumer at a delivered price. At that time foreign produced cement was considered by most purchasers to be superior to domestic cement.

For a time it was commonly believed that the Lehigh Valley was the only locality in the United States where high quality cement could be made. After some years it was discovered that a satisfactory Portland cement could be manufactured elsewhere by blending various materials. Thereafter mills were built in various parts of the country, so that today there are approximately 150 mills scattered throughout the United States. Originally, some brands of Portland cement sold at a premium over other brands, but all domestic Portland cements have for over 25 years exceeded the published minimum standard specifications and for over 20 years customers have refused to pay more for one brand than another. In the early days the Lehigh Valley mills shipped cement all over the United States. At first domestic Portland cement was sold usually f.o.b. mill to cement distributors, who resold to cement dealers and consumers at a price f.o.b. point of use; freight has always been a substantial part of the delivered cost. Some of the new western mills sold direct to dealers, and consumers, and when dealers were sold at or about the same price as distributors, the latter gradually died out and have
44621 not generally existed for the past 25 years. The competition by these new mills was continued, and prices were reduced by the Lehigh Valley mills. The older manufacturers slowly eliminated their distributors and made their sales direct and they took over the marketing practices, as well as the functions of the distributors. With the elimination of the distributor, there were three major factors leading to the selling at delivered prices, and that the were (1) the manufacturer stepped into the shoes of the distributor who had been selling at delivered prices, (2) dealers requested delivered prices or information so they could compare delivered costs, and (3) the necessity of meeting competition of newer mills. Dealer customers, being used to delivered prices from distributors, requested

either delivered prices or information as to the amount of freight charges. Cement continued to be sold in some instances f.o.b. mill with the freight costs to point of delivery in cents per barrel often set forth in the quotations made by various manufacturers and in other instances f.o.b. destination. With the inception of this practice by few manufacturers, purchasers usually requested cement prices on a delivered basis. Gradually most manufacturers acceded to the dealers' requests. Prices on cement came usually to be quoted and sales made on a delivered price basis.

As new mills were built in the Middle West and succes-
sively in other parts of the country which were
44622 nearer freightwise to various consuming markets
than the Lehigh Valley mills, these new mills found that buyers purchased cement from that company which sold at the lowest delivered cost, so that the western mills either met the competition of the older Lehigh Valley mills by quoting delivered prices which were as low as the prices quoted by the Lehigh Valley mills or quoted lower prices. Some of the Lehigh Valley mills met the lower prices of the new mills by reducing their prices at such destination points. This process was repeated in many instances until one, and later a number, of these new mills quoted delivered prices which usually represent the sum of some fixed figure at the new mill point plus freight to destination. At first some of the Lehigh Valley mills attempted to meet this new competition by using varying and different f.o.b. mill prices in quoting for sales to purchasers at destinations nearer freightwise to the new mills than to the Lehigh Valley mills. Some of the eastern mills found that the practice of varying their f.o.b. mill prices resulted in customers' complaints and loss in good will, and made it difficult to meet the competition of the delivered prices quoted by the new western mills. As a result, they met the delivered prices quoted by their western competitors by quoting delivered prices. These prices usually reflected the sum of some base at a new mill plus freight to destination. As new mills were
built throughout the country, this process was re-
44623 peated as to some of the mills which made their de-
livered prices the sum of some base at their mill plus freight to destination, thus making their mills basing points, while some of the new mills did not make themselves basing points but quoted delivered prices to meet the prices quoted

by competing mills; that such non-base mills are generally small mills or distant from large consuming markets.

About 1910 the practice of broadcasting quotations to customers and prospective customers was initiated by one manufacturer and thereafter other manufacturers also distributed printed quotations to the trade.

Cement prices generally came to be quoted on a delivered basis. From 1900 until 1930 the volume of cement consumed in the United States steadily increased. There has been from time to time an actual shortage of available cement in various markets. New mills were built either to meet the increased demand or as promotional ventures. Mills have usually been built at the site of satisfactory raw materials. Such materials are heavy and expensive to transport for any distance. Most mills are systematically kept up to date with the newest equipment. The product has been improved in quality. Such improvements in the product have increased costs of production. Many manufacturers have gone into bankruptcy and mills have been abandoned.

Now, under these assumptions will you state 44624 whether or not you consider that the historical development as described in these assumptions preclude the existence of free competition?

A. No, sir; I would not think that this historical development in any way precluded the existence of free competition.

By Mr. Bond:

Q. Do you consider the historical development described in the preceding question to be consistent with the existence of free competition?

A. Yes, sir; I do.

Q. Will you state whether or not in your opinion as an economist the historical development described is one which you would normally expect to find in an industry of the type described in my long hypothetical question?

A. Yes. This development is one which I would expect normally to arise in such an industry.

Q. Now, Professor, I will ask you to assume the following facts:

Cement is a homogeneous commodity and buyers will not pay more for one brand of cement than another. Buyers almost always compare the cost of the product laid down

at the point of use or resale in making purchases of
44625 cement. Buyers are well informed with reference to prices quoted and market conditions. Freight is a substantial part of the laid-down cost of cement. There are approximately 150 cement mills scattered throughout the country. These mills are owned by more than 50 separate independent companies. Cement mills usually have large capacities with large capital investments. The capacity of most mills exceeds the local demand. Manufacturers have found that reductions in price do not bring a compensating increase in cement consumption.

Cement is usually sold at delivered prices. The prices quoted for cement by various manufacturers at any given destination are usually the same. Some manufacturers do from time to time make secret price concessions. The number of such concessions granted varies from time to time and such concessions usually become known to competitors. All manufacturers shrink their mill nets in making sales at distant points.

Cement is often shipped from one mill into the territory immediately adjacent to some other mill. Manufacturers usually refuse to allow customers to take delivery of cement in customers' trucks at the mill. Manufacturers usually do not permit diversion of cement in transit.

Will you please state whether or not in your opinion as an economist the marketing practices as thus described could logically be the result of an economic development in such an industry?

44626 A. Yes, sir; I think that these practices could very well be the logical result of a normal development in such an industry.

Q. Under the same assumptions, will you state whether or not you consider that the marketing practices as described in these assumptions preclude the existence of free competition?

A. No, sir; I do not think they do.

Q. Will you state whether or not the marketing practices as described indicate to you as an economist that they were arrived at by collusion or conspiracy?

A. No, sir; they would carry no such indication to me as an economist.

Q. Now, in addition to the facts assumed in the last hypothetical question, I will ask you to assume the following:

The quoted delivered prices are usually the equivalent of the lowest combination of some price base plus rail freight to the destinations in question. What effect would that have upon your answer to the last three questions?

A. I do not see that it would in any way affect my answers.

Q. Does the method of selling which has been described in what we have agreed to call the long hypothetical
44627 question appear to you to be one which could logically develop and continue because it was ~~in the~~ individual self-interest of each producer?

A. Yes, sir; I think it could.

Q. If Dr. Fetter stated in his testimony that the early practice of selling f.o.b. mill could not have been abandoned and the present practice of selling at delivered price determined by the use of multiple basing points adopted except as a result of conspiracy and collusion, do you agree with that opinion?

A. No, sir; I would not agree. I cannot see how these practices could not perfectly well have been considered by each mill as in its own individual interest, and if a mill so considered, I do not see why that mill could not adopt and follow such practices without any agreement or collusion with other mills.

Q. Now, regardless of the historical question of how the marketing practices of the cement industry originated, and assuming that for many years cement has usually been sold at a delivered price, could a continuance of such pricing method be the result of independent action by each producer in his individual self-interest?

A. Yes, I think it could.

Q. Professor, what do you understand to be the meaning of the term "competition"?

44628 A. I would define "competition" as the effort by two or more sellers to sell to the same buyer or buyers, each seller acting in his own individual interest without regard to the interest of other competitors. I could elaborate that by discussing different sub terms under the general term "competition," if that is respondent to the question.

Q. Let me first ask you to take up the term "perfect competition," if you will.

A. Perfect competition, as I would use it, and as I think it is generally used by economists, implies a situation in which the amount offered for sale by any one competitor is so small that his sales could have no effect upon the price and therefore no effect upon the action of other competitors. This would imply that in the first place the article was a homogeneous commodity, that is we are dealing with one product which is similar when offered by different sellers, that the number of sellers is very large, which results in each one's share of the total offered for sale being very small, that buyers and sellers are perfectly informed as to all conditions of the market and not restrained in any way, the result being that the seller does not have what we call a price problem. He offers to sell at a certain price. He finds a price on the market. He can sell all he wants to offer at that price. There is no object in his trying to get a higher price because competitors will sell at the going price and he would sell nothing at the higher
44629 price, and he, of course, has no object in offering to sell at a lower price, because he can sell at the going price.

I may add that this term "perfect competition" is a theoretical abstraction as I would use it and as I think it is generally used, the requirements are so rigid and extreme that we would search a long time to find an actual practical illustration of it. In fact, as I use the term I think it is correct to say that you would never find in actual practical affairs a case which would meet this definition of "perfect competition." It is somewhat like the absolute concepts which are set up in many sciences, such as absolute cold, or absolute vacuum, which serve their purposes in scientific analyses, even though they may not be found represented by cases in actual practice.

Q. Now, with perfect competition at one end of the scale, what do economists regard as the term representing the antithesis at the other end of the scale?

A. Well, strictly, I suppose we economists ought to have a corresponding term "perfect monopoly." Actually, I do not think that term is used so often as perfect competition, but it is used by some economists. That would mean the complete absence of any competition, and since competition involves substitute products, and since substitution

is a matter of degree, to have the utmost limit of
44630 combination you would almost have to have a situation in which there could be no competing product offered by any other seller, but I am inclined to think that strictly that would be possible only in the case of a collectivist government which was itself the purchaser and seller of everything, because, after all, washing machines compete for the family money, with automobiles, and with trips to Europe; and now, more practically, when we use the term "monopoly" I think we are apt to include not only this refined abstraction but also conditions which approach it though not reaching it, in that there is practically, or for ordinary purposes no competition, but without going so far as the mathematical limit of perfect monopoly.

Q. Now, is the term "pure competition" another one which is used by economists?

A. Yes, that term is quite commonly used.

Q. What is its relation to perfect competition?

A. "Pure competition" is a situation which approaches perfect competition, but it not required by the definition to go the whole way. Instead of having a number of competitors so great and the share of each so small that it can have no possible effect upon price, we admit that there might me some little effect there, but the effect is very small, so that you could take the definition of perfect competition and supply the adverb "substantially" or "materially" or "practically" at various stages and get a definition of pure competition. I like, myself, to use
44631 that term because it makes it possible to classify certain real cases in actual practice as pure competition, setting them off from other possible kinds of competition which I do not think can strictly be done if you have only the concept of perfect competition.

Q. Now, do you have occasion, also, to use the term "imperfect competition"?

A. Yes, that is a term which has come very generally into the terminology of economic science within the last 15 or 20 years, and describes a condition which is different from either perfect or pure competition, in that now the number of sellers is so small and the amount offered for sale by each so large that the offerings of each seller do have an effect upon the price, and they do have a reper-

cussion in the actions of competitors. The principal and essential condition which defines imperfect competition is that as I have said. Imperfect competition also may be brought about by certain other conditions which fall short of the requirements of perfect competition, such as inertia and ignorance on the part of either buyers or sellers. Perfect competition implies complete knowledge and complete activity on the part of each to seek his own ends. We might have inertia and ignorance which makes the competition imperfect competition. We might also have a differentiation of the product so that whereas in perfect competition no buyer has any reason to prefer the product of one seller more than another, in imperfect com-
44632 petition there may be such preference. It would be illustrated by cheap automobiles, for instance, Fords, Chevrolets, and Plymouths, they are so nearly alike that we can say that they are in competition together, and yet they are just different enough so that there may be prejudice or preference on the part of buyers, and so again you depart from the conditions laid down for perfect or pure competition.

Q. Is imperfect competition rare or common in modern industry?

A. I think it is very common, indeed. In fact, I would not hesitate to say that it is the prevailing condition in all manufacturing industry in an industrial nation like the United States. I would find it difficult to think of any manufacturing industry in the United States which operates under a condition of pure,—certainly of perfect competition.

44633 Q. Now, does this term "imperfect competition," as used by economists, imply collusion or agreement between the sellers?

A. No, sir; not at all.

Q. Does it mean the absence of competition?

A. No, it does not mean that. It means a different kind or a different condition of competition.

Trial Examiner Norwood: For all practical purposes is it such competition as will admit of the play of contending forces engendered by honest desire for gain and as attended by equality of opportunity and fluctuation of price?

The Witness: Well, there, if you don't mind, there seem to be two or three questions.

Trial Examiner Norwood: Yes.

The Witness: May I take them, perhaps, in order?

Trial Examiner Norwood: Yes.

The Witness: It certainly implies the opportunity for the exercise of aggressive competitive acts on the part of different competitors, each seeking his own advantage. In fact, I think it would be quite correct to say that imperfect competition is apt to be more vigorous and
44634 aggressive as a rule than perfect or pure competition for the obvious reason that it is only in imperfect competition that the acts of one competitor will have a substantial effect upon the price. It is only in imperfect competition that the competitor has to be pretty careful about the reactions of his competitors to his own actions. Imperfect competition also furnishes many competitive devices which are not possible or worth while in pure competition.

For instance, if I may cite the marketing of wheat by the farmers as a case of pure competition, because the number of bushels sold by each farmer is too small to have an appreciable effect upon the price, you will understand why farmers do not engage in advertising to encourage the use of bread made out of wheat. There might be just as good national effect from such a campaign as from a campaign to urge the purchase of automobiles, or make every family a two-car family, we will say, but its advantage would be so small to the individual farmer that it would not pay him to indulge in it. In the same way, the individual farmer does not have a force of salesmen going out, and he does not exercise many of the acts which mark keen and aggressive competition, and which you find only under conditions of imperfect competition.

Now, I have talked so long, Your Honor, I may
44635 have forgotten the other parts of your question. If you will ask me over, I would be glad—

Trial Examiner Norwood: Read the question.

(Examiner's question read.)

Trial Examiner Norwood: I think you have answered.

The Witness: I do not think I am perhaps clear as to the latter part of the question.

Trial Examiner Norwood: I think you have answered it.

By Mr. Bond:

Q. Professor, taking the cement industry as described in my long hypothetical question, would it, in your opinion, be possible to have a condition of pure or perfect competition in that industry?

A. No, sir; I do not think it would be possible.

Q. And for what reasons?

A. First of all, and most essential, the number of the competing mills is small enough and the product of each one is large enough so that the offerings of each mill are bound to have a substantial effect upon price and market conditions, and there is a corollary from that, that action taken by one mill is very likely to result in reprecussions in actions of competitors, the possibility of which repercussions must always be considered before any mill takes action. Now, those conditions alone would, I think, preclude the possibility of perfect competition in the
44636 cement industry as it is described in these hypotheses.

Q. Well, now, do you find any example of pure competition in any manufacturing industry in this country?

A. I cannot think of any manufacturing industry in this country which I could say was operating under conditions of perfect or pure competition.

Q. Now, if a producer in an industry exercises self-restraint in his marketing policy, does this negative the existence of free competition?

A. No, sir; I should think that itself is one of the acts which competitors are bound to take in competition.

Trial Examiner Norwood: Now, you are referring to this imperfect competition as free competition; is it the same thing?

Mr. Bond: Let me ask him—

Trial Examiner Norwood: Are they the same thing?

Mr. Bond: —to define it, if I may.

Trial Examiner Norwood: Well, if he can just
44637 identify it as what he has already—

The Witness: My answer, Your Honor—

Trial Examiner Norwood: —described as imperfect competition, he can say "yes."

The Witness: I would not hesitate to answer your question "yes," Your Honor, even without having given my definition of "free competition."

Trial Examiner Norwood: Go ahead.

By Mr. Bond:

Q. Well, what would be your definition of "free competition"?

A. Well, I am not aware that free competition has a technical definition in the science of economics. I do not use it so, myself, but I should think that the term would ordinarily mean competition which is not restricted by collusion or combination on the part of competitors. There might be a question of restriction by governmental authority. I would, myself, be supposed to regard such conditions as still being free competition as long as the competitors, themselves, have not entered into any collusion or combination, even though their acts may be restricted by legal authority, but I am not sure that all economists would accept just that definition.

Trial Examiner Norwood: And in all other respects it is identical with perfect competition?

The Witness: I would not say "free competition" is another kind of competition. I would say it is a quality of competition, whether imperfect, pure, or perfect, 14638 and in any case collusion or agreement to whatever degree among the competitors would, I think, preclude the application of the term "free competition" to that condition.

By Mr. Bond:

Q. And I understood you would say that taking free competition in the sense in which you have defined it, the exercise of self-restraint was not inconsistent with free competition?

A. Yes, sir; I should think that any competitor acting in his own interest would from time to time determine to take no overt act to let the status quo continue for a time, and I should not say that that meant that there was not competition or that there was not free competition so long as he took that action on his own initiative, as I can see he might very well do.

Q. Now, assuming that cement is generally sold at delivered prices, and that one manufacturer abandoned this practice and sold his cement exclusively on a uniform f.o.b. mill basis, and that the other competing manufacturers continued their practice of meeting prices quoted in the various markets, what, in your opinion as an econo-

mist, would be the economic result to the manufacturer making the change?

44640 A. Under the present system as I understand it from the hypotheses, this manufacturer is able to reach out beyond his own natural territory by freight absorption and sell cement in various territories meeting prices set with relation to other price basis. If now he goes over onto uniform f.o.b. mill bases, he would have to withdraw from all of those points or else put his f.o.b. price so low that with freight added it would not be higher than the lowest price at which he is selling on a freight-absorbing basis. That would be necessary in order to hold his sales outside his own territory. That would involve, however, such serious loss through price reduction on the sales within his own territory that I should think that the result would be ruinous to him.

Trial Examiner Norwood: In other words, the necessity for having a uniform mill price would prevent his
44641 going very far from the mill without loss; is that correct?

The Witness: I assume from the question that it was asked with respect to a uniform mill price, so that if he tries to get into any particular market he can do it only by lowering his price basis affecting all of his sales. I might add that at the same time his competitors can come into his territory by freight absorption.

Trial Examiner Norwood: Suppose he just quoted f.o.b. mill and had various prices made with due regard to the freight to distant points, and so on?

The Witness: Yes, sir. Well, in that case I should think he would immediately receive a storm of protests from his customers who would find him charging different f.o.b. mill prices, which they would not find justified, whereas under the present system there is justification, that the delivered price is either the sum of his base price plus freight or else it is a price which he sets to meet the competition of some other mill at that destination.

By Mr. Bond:

Q. Now, assume, Professor, if you will, that a new mill should be built, and instead of conforming to the existing industry marketing practice as described in my
44642 long hypothetical question, it sold exclusively on a uniform f.o.b. mill basis, while other competing manufacturers continued their practice of meeting prices

quoted in various markets. What, in your opinion, would be the economic result to the new mill?

A. I should think the new mill would meet the same disabilities as I have described in answer to your previous question in the case of an old mill that changed its practice and would very likely find that its revenue from sales in its own territory was so ruinously cut down by the reduction in the baseprice that it would have to make to reach outlying points that it might be driven out of business or fail to get established.

By Mr. Bond:

Q. If a pricing method such as was described in my long hypothetical question were once established, could it, in your opinion as an economist, be abandoned without collusive agreement?

A. No, sir; I do not think it could, because, as I have already testified, I fail to see how any one mill could make the change and survive so long as other mills adhered to the old system, and I can't conceive of the coincidence by which all of the mills would separately decide to abandon a practice and go to another one which to each one of them would seem to be ruinous. Therefore, I should 44643 think only by some kind of an agreement in which each mill would be protected against its competitors staying on the old system would permit of the going over to the uniform f.o.b. mill system.

Q. Then, if it were abandoned tomorrow by all of the different members of this industry, would that be any indication of collusion to you?

A. It would to me, sir, yes, unless it might have been by Government order or legislation.

Q. Now, do you see anything in the continued existence of such a method of selling as was described in the long hypothetical question which requires any form of policing or enforcement on the part of the industry as a whole to maintain such a selling method?

A. No, sir; I do not see that any kind of policing is necessary. The essential thing is that the sellers have their complete information about conditions. But that I should think would be obtained without any policing on the part of the industry. And I might add that so far as adhering to this method goes it would seem to me that each mill might do it as a result of following its own line of individual interest.

Q. Counsel for the Commission at page 17639 of the record propounded the following hypothetical question to certain economic experts called as witnesses for the Commission:

"Assume that there is a general practice in the
44644 cement industry of mills quoting and selling only at delivered prices and of refusing to quote and sell f.o.b. mill.

"Assume that some mills and some groups or clusters of mills are basing points and that some other mills are non-basing points.

"Assume that delivered prices are the equivalent of base-point prices plus rail freight from base points to destination and that the lowest combination of base price plus rail freight determines which base-point price will govern at any particular destination.

"Assume that when delivered prices are made as described the delivered prices of all mills become identical at the same destination and that non-basing-point mills match the delivered prices at particular destinations of the basing-point mills.

"Assume that rail freight is ordinarily paid by the buyer to the railroad company; is then deducted from the face of the invoice and the balance paid to the seller.

"Assume that the mill nets of each non-basing point mill vary between its respective customers depending on the differences in freight to their respective destinations, higher mill nets being received from its nearby customers than from its more distant customers.

"Assume, also, that when selling for delivery at destinations governed by other basing-point mills the mill net prices of each basing-point mill also vary between
44645 its respective customers depending on the differences in freight to their respective destinations, higher mill nets being received from customers in territory governed by it than from customers in territories governed by other basing-point mills.

"Assume, also, that substantial shipments are being regularly made by basing-point mills into the territory governed by other basing points.

"Take all of those things together and then tell us whether or not, in your opinion, that corresponds to any sort of competitive method of pricing with which you have become familiar in the course of your studies and experience?"

I will ask you, Professor, to answer the same question.

A. I would, first of all, express just a little uncertainty as to the meaning of the term "corresponds"—"corresponds to any sort of competitive method."

If that means "is compatible with," or "could exist along with a competitive method of pricing," which I will assume it does mean for the purpose of my answer, then I should say that in my opinion all of the conditions described in this question might very well come about in connection with or in harmony with a competitive method of pricing.

Trial Examiner Norwood: Does this describe, in your opinion, a competitive method of pricing?

44646 The Witness: Yes, sir; it does.

Q. In your opinion, are the marketing and pricing methods described in this question consistent with the existence of competition, or does their existence imply collusion or conspiracy?

A. It seems to me that all of these practices here set forth could perfectly well be adopted by any separate mill acting in its own individual interest and without waiting for combination or agreement or collusion with other competitors; and, therefore, I would say that these practices seem to me quite consistent with competition and do not set up a presumption of collusion or combination.

44647 Q. Now, Professor, I will ask you another question that Mr. Wooden put to Dr. Viner based on facts outlined in this same hypothetical question which I have just read. The question is as follows:

"Will you state, in your opinion, what are the effects on the national economy of the method or system of pricing cement" that was there outlined?

A. You ask me—

Q. I ask you to answer that question.

A. —to answer that same question.

Once more I would be a bit uncertain as to the meaning of "the effect upon the national economy."

It would appear to me that this method of marketing is one in harmony with competition; that it, therefore, would tend to promote the production and marketing of cement under a condition which would in the long run tend to produce cement and deliver it somewhere near its cost of production. I am not sure whether something more is required by the phrase "effect upon the national economy."

Q. Well, are there any wastes in connection with such a method as has been described which you would wish to comment on in connection with the effect on the national economy?

A. Yes, sir. I think very obviously a selling method of this sort does involve some wastes. First of all, 44648 obviously there occurs the waste of the freight charges involved in the penetration by any mill into the territory of its competitors through freight absorption, a sort of condition which may sometimes be properly described as cross hauling.

I can realize that such a system may doubtless involve some waste in advertising, in the activities of salesmen, in various measures taken to push a certain brand of cement, or the product of a certain mill, as against its competitors, and that those various practices might well involve costs which from the social point of view would represent a waste.

As I understand these assumptions, however, those seem to me to be only the wastes which are inherent in competition generally, and it is my opinion that competition always involves more or less of waste of this sort. From the point of view of national economy, those wastes are justified by the advantages of competition, as I have already suggested, of tending in the long run to produce the kind of goods the people want and deliver them at prices reasonably close to the cost of their production. As compared with any system alternative to competition, it would appear to me as an economist that the advantages of competition definitely outweigh the disadvantages of the wastes that it may necessarily involve.

Q. Do you think that this method of marketing as described in this hypothetical question of Mr. Wooden 44649 would facilitate the maintenance of rigid prices?

A. I think on the whole it would have a certain tendency toward rigidity of price.

Q. Do you think that this system of pricing provides an umbrella for badly located plants?

A. Well, I would think you would have to consider that a plant may be badly located either with reference to the proximity of its materials or with reference to the market, and I am rather inclined to think that this method would be not an advantage to the poorly located mill but a disadvantage so far as its unfavorable location were due to— Let me take a moment to think how that would operate.

Yes. This method permits other competitors to come into this mill's territory by freight absorption, whereas under an f.o.b. basis that would not be possible. Therefore, to that extent this method, so far from helping the mill poorly located with respect to markets, is less helpful to it than the other. I am not sure that on the basis of proximity to materials there might not be an opposite effect.

Q. Now, if Professor Viner testified, on page 15695, that in his opinion the pricing system of the cement industry as defined in Mr. Wooden's question would tend to produce and intensify a depression in our national economy, would you as an economist agree with that statement?

A. No, sir. I can't see any connection between
44650 this particular marketing system and influences tending to produce or intensify an economic depression.

Q. Professor, assume that certain mills in the cement industry have no price base but sell at each delivery point at the price which they find other companies quoting there. Would you say that such a mill, commonly called a non-base mill, is not competing?

A. Oh, no. I would say that mill was competing in that it meets the price set by competitors.

Meeting a competitor's price seems to me is one of the essential parts of competition.

Q. Professor, I am now going to take up the subject of trucking and ask you a number of hypothetical questions which are based on the same fundamental assumptions but with certain changes or additions which I want you to consider carefully. These questions will deal with the discontinuance of trucking by one company and its continuance by competing companies, with the inauguration of contract trucking and with the use of a premium charge for truck delivery.

Now, the common assumptions in all of these questions on trucking are as follows:

44651 Assume that the most important customers of a particular cement manufacturer are its dealers and that dealers in any one locality are in competition with each other in the retail distribution of cement;

Assume that cement is usually sold at delivered prices; that a cement manufacturer, upon request, sold cement

for delivery to trucks at an f.o.b. mill price; that a few of its dealers took truck delivery of cement, and that such dealers, from time to time, invaded the normal market area of other dealers of this company, and that these local dealers complained to the company and threatened to discontinue doing business with it.

Assume that a few of its dealers were able, through trucking, to deliver the cement at a lower delivered cost than competing dealers in the same locality, and that the latter complained to the manufacturer.

Assume that the great majority of this manufacturer's dealers were strongly opposed to truck delivery and urged it to discontinue sales for truck delivery.

Assume that another important class of its customers were the railroads, that they were dissatisfied with the traffic they were losing from truck deliveries and urged this cement company to discontinue sales to trucks.

Assume that the company's mill was equipped to load cement in cars and that the cost of loading in trucks
44652 was usually greater than that of loading on cars, and further that loading on trucks had a tendency to cause labor dissatisfaction because of irregularity of shipping operations.

If, under these conditions, this manufacturer who had been making deliveries to trucks at an f.o.b. mill price changed his practice in any one of the following ways, i. e.:

1. By refusing to make such delivers to buyers' trucks;

2. By refusing to make deliveries to buyers' trucks and in place thereof offered to make deliveries by trucks, either owned by him or by contract trucker, at the same delivered price as charged for deliveries by rail;

3. Continued to make deliveries to buyers' trucks but charged a differential for loading such trucks;

4. Continued to make deliveries to buyers' trucks but charged a price equal to the delivered price as quoted for rail delivery.

To you, Professor, as an economist, is such action consistent with individual action in the individual company's self-interest?

44653 A. It would seem to me that any one of these actions might quite naturally be taken by a company under the conditions assumed on account of its own individual interest.

By Mr. Bond:

Q. Now, under the same assumptions as stated in the preceding question, if this manufacturer, after having changed to one of the four alternatives stated, should thereafter change to another of said alternatives, or revert to his original practice, to you as an economist is such action consistent with individual action in the individual company's self-interest?

A. I should assume that this company had taken that action because, after due consideration, possibly experience, it decided that the change was to its own interest, and I see no reason why the company could not take that action without any agreement or collusion with any of its competitors.

Q. Now, upon the same assumptions which I stated in my first question on trucking, if the manufacturers competing with the manufacturer who has adopted one of said practices should, in their turn, adopt the same practice, would such action to you as an economist raise an inference of collusion?

A. No, it would not, because I can't see why any one of these other mills should not be perfectly able to take this action without agreement with competitors and each on the basis of its own interest.

44654 Q. Now, if one of these competing manufacturers shall thereafter again change its practice to one of the other alternatives stated in the original question on trucking, and thereafter the other competing manufacturers shall adopt the same practice, will you state whether or not to you as an economist such action would raise an inference of collusion?

A. You mean that after many or all of the mills have changed to a certain practice, then one changes back, and then later the others change back?

Q. That is right.

A. Again, I do not see why the action by any one of those mills could not be done in its own self-interest, and therefore it would raise in my mind no inference of collusion.

Q. Now, passing to a different matter, Professor:

Assume that cement manufacturers have learned that buyers of cement, both public and private, ordinarily determine their purchases between competitive sellers on the basis of cost to the buyer at destination, and that manu-

facturers with knowledge of that fact generally refuse to bid or quote f.o.b. mill, and without reference to the cost to buyer at destination. To you as an economist does such refusal imply collusion or agreement?

A. No, sir. I can see how any single mill might arrive at the conclusion that such refusal to sell or quote f.o.b. mill was to its own interest, and therefore would not
44655 require agreement or collusion with other competitors.

Q. And if the other mills competing with this mill should take similar action, would that change your answer?

A. That will not change my answer. I think that any one of those could equally well take this action in its own interest without reference to the others.

Q. Professor, I will ask you to assume that cement is a homogeneous commodity; that it is usually sold at delivered prices; that it is a heavy and bulky commodity, so that freight is an average of approximately 25 percent of the delivered price; that there are a number of manufacturers offering to sell at each destination; that the buyers, including dealers, contractors, and governmental officials, are well informed on market conditions and prices; that each manufacturer is constantly and immediately informed by his salesmen and customers of the prices being quoted by all of his competitors; that the capacity to produce by the manufacturers is in excess of the current demand.

And assume that there is no agreement or understanding between the manufacturers as to the prices they will charge, but that each manufacturer determines his own price independently for himself, and that such prices are the result of free competition.

Would you on these assumptions expect the openly quoted prices at any destination to be generally uni-
44656 form or different?

A. I would expect them to be generally uniform.

Q. Now, in the last question and answer, Professor, where you have said that you would expect openly quoted prices to be uniform, what do you consider is the price of cement?

A. By the price of cement, as the price of anything in general, I consider the amount that is paid by the buyer at the point where the cement is delivered to him.

Q. And when you say "price" in that case does it include the cost of transportation, or freight?

A. Well, strictly speaking, I do not think of price as including elements of cost at all. That is, the price is not made up of the sum of elements of cost. But, as I understand your question, the price paid by the buyer would have to cover the cost of freight the same as any other cost which the seller incurred in producing and delivering a product.

Would you say that price is what is paid by the buyer after deducting therefrom the amount of the freight—

A. No, sir; I would not.

Q. —or without such deduction?

A. Without such deduction, because I consider that the freight has to be covered the same as any other element of cost.

I might go further and say that there is no such
44657 thing as a commodity without reference to a place.

And as we economists use the terms, the production of goods implies the creation or addition of form utility, time utility, place utility, and ownership utility. And when you talk of cement, you must mean cement as of a certain point; and when you talk of the price of cement, you must mean the price of cement as of a certain point. Therefore, it is meaningless, I think, to consider price except as it covers what the seller demands for the delivery of the product at that particular point. And, so, of course, in that sense it includes the freight. That is the element of place utility.

Q. Now, assume, again, that cement is a homogeneous commodity; that it is usually sold at a delivered price; that it is a bulky and heavy commodity, so that freight is an average of approximately 25 percent of the delivered price; that there are a number of manufacturers offering to sell at each destination; that the buyers, including dealers, contractors, and governmental officials, are well informed on market conditions and prices; that each manufacturer is constantly and immediately advised by his salesmen and customers of the prices quoted by all of his competitors; that the capacity to produce by the manufacturer is in excess of the current demand;

And assume that the prices openly quoted by different manufacturers at the same place and time are consistently uniform.

44658 Will you state whether the fact of such uniformity in the openly quoted prices, to you as an economist,

justifies an inference that such prices are the result of collusion or agreement?

A. No, sir. It needs no such collusion, because that uniformity of price I would think would be a necessary condition in a competitive market where buyers are well informed and where the buyers have the option of purchasing from different sellers.

Q. Is there any consensus of opinion among economists that under certain conditions they expect such a uniform price in the market at any time?

A. I think practically all economists would agree to the general principle that in a given market at a given time a given commodity must sell at the same price; or, differently put, there cannot be two prices at the same time and the same place for the same commodity under conditions of competition.

I might add that under perfect competition that condition would be absolutely true without qualification. Under pure competition, or some degree of removal from perfect competition, the presence of some off price sales here and there would not destroy the general principle. That is, there might be some buyers not fully informed who would purchase at a higher price than they need to pay. There might be possibly an ill-informed seller who would
44659 take a lower price than he need take. But under the general conditions assumed here, which seem to include pretty compiete information, I should think that those off price sales would be very few and unimportant.

Q. Would you say that under such conditions it would merely be a tendency, or would it go further than that?

A. I would not hesitate to say that it was a tendency, because I think that all scientific laws are tendencies. That is, we say all scientific laws in the form—if "A" is true, "B" is true—all scientific laws are hypothetical. Given certain conditions, certain results follow, and we can say inevitably follow, because we have laid down a hypothesis of precise conditions.

Now, in actual practical effect all of those conditions may not be met, and therefore we bring in the term "a tendency." A tendency means that a certain set of causes will inevitably produce a certain result, if not operated upon by other causes not specified.

So I would say that any such generalization as this may be described as a tendency. But when you have named so

many of the conditions as you have in the hypothesis here, one hardly needs to protect himself by saying it is a tendency. You can say that under those conditions this result would inevitably, so far as any practical event is inevitable, come about.

I do not perhaps quite draw the distinction that
44660 you had in mind between a thing being a tendency and something else.

Q. Professor, as a part of the work which you said you did with Professor Adams at the time of the so-called Old Cement case, did you cooperate with him in the collection of authorities on this general principle, that an economist expects a uniform price in a market for homogeneous products, and that Professor Adams testified to in the former case?

A. Yes, sir; I did. It was my task to examine the writings of very many other economists; in particular, the authors of general textbooks in economics with respect to their statements as to market, competition, price, and especially this principle of the identical or uniform price of a given commodity in a given market.

By Mr. Bond:

Q. And have you brought those authorities up to date by the additions of subsequent publications?

A. Yes, sir; I have, including not only publications of other authors, who either had not written or whose writings I had not examined at that time, and also by examination of later editions of books of the same authors.

Q. Have you prepared a list of these authorities?

44661 A. Yes, sir; I have prepared such a list.

Q. Do you have it?

A. I think you have it, Mr. Bond.

Q. Is this the list (showing a document to the witness)?

A. Yes, sir; that is the list.

Mr. Bond: I ask to have it marked for identification.

(The doument was marked for identification "Respondents' Exhibit 3466-A to 3466-C.")

44667 Q. Professor, do you know of any economic writer who has taken the position that it is the tendency of prices not to be identical at destination under a method of marketing such as we are considering here?

A. No, sir; I do not.

44668 Q. Professor, do you know of any economic writer who has taken the position that under this

uniform price rule that we have been considering the uniformity of price will not be found at the point of delivery?

A. I do not know of any that have taken that position, with the possibility three exceptions, whose statements on that are not entirely in agreement with themselves and not entirely clear.

Q. And they are?

A. They are Drs. Fetter, Viner, and Commons.

44669 Q. Professor, how would you define the term "market"?

A. I would define the term "market" as a place where buyers and sellers come together, either physically or through some means of communication, such as telephone, telegraph, or brokers or agents or salesmen representing them, and there determine prices. In other words, the market is the meeting point of the forces of demand and supply and the place as of which prices are determined.

44670 Q. Is it necessary that the buyers and sellers be actually present at that point?

A. It is not necessary. They may be, as I just said, represented by agents, or they may be possibly in communication through telephone, telegraph, or even mail. Ordinarily they would be present, or their agents would be present.

Q. What, in your opinion, is the relation between the market and the place where the goods are delivered to the buyer?

A. Ordinarily the market is the place where the goods are delivered to the buyer. To be entirely accurate, I might say that it is conceivable that under certain conditions the market might be a different place. You can imagine, for instance, that; let us say, the dealers in Newark, N. J., we will say, meet with the salesmen of cement companies in New York at a certain place and there go through their bargaining and the processes of determining the price and making their contracts for purchase of cement to be delivered in Newark. In that case I would say that the market for Newark cement was at this point in New York City. But I conceive of that as being a highly artificial example. I mention it only to protect myself as I use the term "market" hereafter against having overlooked any possible exception. And, so having thus protected myself, I may say that in general that market is at the place where the goods are delivered to the purchaser.

Q. And is that the meaning with which you cus-
44671 tomarily use the term "market" in your testimony here?

A. I use the term "market" as in harmony with the definition I have stated, as the place where buyers and sellers come into contact and the forces of demand and supply determine price, and then I go on to add that that will ordinarily be understood to be the place where the goods are delivered to the buyer.

Q. Now, in the case of cement sold in the way in which I described in my long hypothetical question to you, where, in your opinion, is the market for cement?

A. The market for cement is at the place where it is delivered to the purchasers of cement.

Q. Assume that a number of manufacturers through their salesmen solicit orders from a dealer located in one town, and this dealer ultimately buys from one of those companies so soliciting, where would you say the market was?

A. The market is at the location of the dealer where the cement is to be delivered to him.

44672 Washington, D. C.,
Wednesday, September 25, 1940.

44673 FRED [redacted] FAIRCHILD thereupon resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Bond.

Q. Professor, referring to the hypothetical question descriptive of the industry as propounded by Mr. Wooden, and which appears in the record beginning at page 44643, you will recall that I asked you yesterday whether you thought such a method of selling contributed or would tend to produce rigidity in price, and you said in substance that it would.

Showing you the question as used by Mr. Wooden, I will ask you to point out what feature or features, if any, you had in mind when you reached that conclusion?

44674 A. The fourth paragraph of that question assumes that delivered prices when met become identical at the same destination, and that non-basing-point

mills match the delivered prices. From that I infer that a delivered price having once been set by any base mill, the other mills match that price. This paragraph specifically says that the non-base mills do, but I understand that any mill selling in that destination would meet a price set by some base mill. I concluded, therefore, that any mill contemplating a reduction in price would be sure to have in mind or have thought its competitors would meet that reduction. That might very will lead to a reducton of price all along the line, without giving the particular mill that initiated the reduction any advantage in a larger share of the market than it had before, and giving all of them a loss on account of the lower price, and that in my mind sets up a certain condition of reluctance on the part of any mill to initiate a price reduction as compared with some other marketing system in which that particular motive leading to reluctance would not be present. It was on that basis that I saw in this hypothetical statement a certain influence tending toward rigidity of the price.

Q. Now, let me read to you the following from the testimony of Dr. Fetter, page 17710, question by Mr. Wooden:

"Dr. Fetter, are you familiar with the consensus of opinion among economic writers on the subject of 44675 the tendency of prices to be uniform in a competitive market?

"A. I have examined at one time or another the writings of a very large number of economists on that subject, and it is the general consensus that in a typical market at a definite local place without inclusion of freight, that the rule holds that there is a tendency towards uniformity of price in that market."

Do you agree with Dr. Fetter's testimony?

A. No, sir, I very definitely disagree. I also claim to be familiar with the consensus of opinion of pretty much all of the leading American economists obtained by an examination of some 91 different writers and more than a hundred books, out of which I find not more than three, including Professor Fetter himself, who in any way at all would incline toward the opinion he expresses to the effect that price—that freight is not included in the delivered price at any particular point. I find the consensus of opinion of these some 88 economists exactly the reverse, that delivered price includes whatever cost is required to get the goods delivered at that point.

Q. Now, assume that cement is usually sold at delivered prices, and that from past experience manufacturers have learned that a reduction in price by one manufacturer is immediately met by others, and that he gets little or no increased volume, but does get a lower price for his product. Under conditions of free competition, would you expect each manufacturer to make successively lower prices?

44676 A. No, sir; I would not. I would expect each manufacturer in each particular instance to consider all of the circumstances but be especially influenced by what would be the probable action of his competitors, and under the assumption you have stated he would have every reason to expect that his competitors would meet any price reduction he made, the result of which would be that he would gain no appreciable larger share of the total amount sold than he had before, and he, along with all the others, would suffer a loss from a lower price. The fact that his competitors also suffered a loss would not be any particular comfort to him.

Q. Now, assume that on sealed competitive bids to governmental bodies experience has shown that the final award is made on the basis of total cost at point of use, including freight; that it has happened on a number of occasions that when on competitive bids one company bids a price lower than its competitors, the business is not awarded to such low bidder, but sometimes after such low bid is made public, all bids are thrown out and new bids are asked, when all bidders bid as low or lower than the original low bidder; and it has also happened that the governmental agency has permitted other bidders to reduce their prices without a new letting, either to meet the original low price or to make an even lower price;

And assume that it has happened that when a company has bid on a competitive governmental letting a
44677 price less than its going commercial price at the destination in question, a competitor has usually reduced his commercial prices so that such reduced governmental price has often or usually been followed by a general reduction in commercial prices.

Under these assumptions, what would be the economic effect on the price to the manufacturer in the event of a sealed bid to a governmental body?

44680 A. I should think that ordinarily under these conditions a manufacturer would hesitate to make

in a sealed bid to the Government a price lower than the lowest price he expected would be set by whatever base mili governed the price at this particular destination. Ordinarily, in the absence of any special freight rate or special custom in the interest of the Government that would be the going commercial price at that destination. The manufacturer would fear that if he offered a lower price he might, himself, get no special benefit from that lower price, and the existing price at that destination, the commercial price, might be lowered as a result of events that would follow as stated in these assumptions.

44681 Q. Now, Professor, I will ask you to assume that we have changed the last sentence in these assumptions which you have been considering so that the last clause will read, "a competitor has usually reduced his commercial prices so that such reduced governmental price has sometimes been followed by a general reduction in commercial prices."

May I change that on the record, if Your Honor please?

Trial Examiner Norwood: Yes.

Q. Make it read: "a competitor has sometimes reduced his commercial prices so that such reduced governmental price has sometimes been followed by a general reduction in commercial prices."

Would that change your answer as given to the preceding question?

A. I do not think that would change the general import of my answer. Of course, the change in the question implies that a manufacturer might think under certain conditions he was a little safer on taking a chance that these adverse results would not follow, but in general, under the refined assumption I think he would still hesitate to submit the lower bid price to the Government, as I previously stated.

44683 Q. Professor, suppose we omitted entirely the assumptions in the second paragraph and limited our assumptions to those stated in the first paragraph which referred to, in general, what has happened in the way of action by the governmental body itself.

A. May I take a moment to read that paragraph over?

Q. Yes; and I am asking you then whether or not in your opinion that in itself would tend to have the same result that you indicated previously?

A. Why, yes, I think even on that assumption I would

find the manufacturer very reluctant to offer a specially low bid to the Government.

Q. Now, assuming the facts as to the cement industry as stated in the first question to you on these sealed bids, and assuming that on such sealed bids all companies bid the same delivered price, does such uniformity of price raise an inference of collusion, or is it compatible with individual competitive action?

A. I think it raises no inference of collusion and is compatible with competitive action. I would, as I think perhaps I testified a moment ago, assume that each
44684 mill would make a calculation determining what would be the price to the Government on cement at that destination. It would presumably be the lowest sum of some base, some mill base, plus freight to that destination. Having made that calculation and determined the delivered price to the Government at that destination, I should think that each mill that wished to sell to the Government would meet that price and bid that price I have described, to my mind would be made by the separate,—the individual companies separately. I do not see where it would require any combination or agreement or collusion.

Q. Now, if the Government asks for bids f. o. b. mill, how would you as an economist expect the different bidders to determine their f. o. b. mill price bids?

A. I think they would first determine the delivered price to the Government in the manner I have just described, and then subtract from that the price which would be paid by the Government from the mill to the point of delivery.

Q. Did you mean price, you said?

A. No, freight. I correct that.

Q. And if the f. o. b. mill bids were thus made taking into account destination cost available to Government from other sellers, would an economist expect destination costs of the different bidders to be identical or different?

A. The destination cost of the different mills would be identical at that particular place.

44685 Q. And if on such f. o. b. mill bids, the destination cost to the Government of the different bidders was the same, will you state whether or not such identity would to you as an economist raise an inference of collusion?

A. It would raise no inference of collusion because as

I think I have already testified the process of arriving at it seemed to be the natural one that would arise out of a condition of competition without agreement or collusion.

Q. Now, still considering these same assumptions which we started with on this matter, sealed competitive bids, and assuming further that the dealer business is the backbone of the cement business and that dealers learn of prices to governmental authorities and demand an equally low price, would you expect a cement company to make a specially low price on a governmental invitation involving a large quantity of cement?

A. I would think not, because the mill would be aware that price would become known to its dealers in that destination, to its competitors, that dealers would very likely protest and ask the same price. They might protest to the mill, they might protest to its competitors, and so customer good-will would be lost if the mill did not respond and give dealers the same low price as was given the Government, whereas if it did respond there would be a general price reduction which I should think a mill would be very reluctant to initiate.

Q. Now, Professor, I am going to take up with 44686 you the subject of diversions of shipments in transit by the buyers, and I shall ask you a number of questions based on the same general set of assumptions with certain additions to which I shall direct your attention. The common assumptions in all of these questions on diversions are as follows:

Assume that a cement manufacturer usually sells his cement at delivered prices; that the great majority of his sales are to dealers; that a number of competitors are actively soliciting the purchasers of each dealer in the territory in which this company does business; that dealer good will is a valuable asset to this manufacturer.

And assume that this manufacturer sells in Town "A" at a delivered price of $2 per barrel, on which sale he nets, after deducting the freight rate, $1.50 per barrel.

And assume that this manufacturer sells in Town "B" at a delivered price of $2 per barrel, from which he nets $1.20 per barrel at his mill.

And assume that in each case the dealer pays to the railroad the amount of freight and remits the balance to the manufacturer.

And assume that a dealer in Town "B" orders cement

to be shipped to that town, and after the cement is delivered to the railroad the dealer diverts the shipment in transit to Town "A," paying the railroad the 50 cents
44687 freight due for a shipment from the mill to Town "A" and remitting to the manufacturer the $1.20 per barrel, which was the mill net due to the manufacturer on a shipment to Town "B," so that this Town "B" dealer now has this cement in Town "A" at a cost of $1.70 to him.

Assume that this Town "B" dealer now sells this $1.70 cement in competition with the manufacturer's customers in Town "A" whose cement is costing $2.

And assume that the manufacturer's local dealers in Town "A" complain to the manufacturer and in some instances threaten to discontinue doing business with him and the manufacturer adopts a policy of preventing such diversions.

Under the circumstances, would you as an economist say this action is or is not consistent with individual action in the individual company's self-interest?

A. Why, it seems to me that the mill in the condition here assumed would have every reason in the world for not permitting this diversion. It is obvious that it would lead to a loss of dealer good will in that town, and be most unfavorable to the mill itself, and in arriving at that conclusion I do not see any necessity whatever for this mill consulting with or combining with any other mill. It seems to me it is an obvious relationship so far as that mill's own interest is concerned.

Q. Now, making the same assumptions as contained in the previous question on diversions, and adding the following assumptions that manufacturers competing with
44688 the company referred to also sold cement to dealers located in towns "A" and "B," and elsewhere, on which they received different mill nets, that whenever a dealer buying from any of these manufacturers diverted cement to a destination at which that company had other dealers, that the local dealers complained to the manufacturer making such sales.

Now, if an individual manufacturer discontinued the practice of permitting diversions, would you as an economist say that this is or is not action consistent with individual action in individual self-interest?

A. I see nothing in those assumptions that would lead

me to any conclusion that that action was not wholly taken by the particular mill in following out its own individual interest or reasons which are largely covered in my answer to the previous question.

Q. Now, making the same assumptions as contained in the last question on diversions, and adding the following assumption, that one individual manufacturer discontinued allowing dealers to divert cement, if other manufacturers discontinued permitting diversions in transit would you as an economist tell us whether or not this raises an inference of collusion?

44689 A. It raises no inference of collusion, in my mind; it seems to me each manufacturer takes that action on his own initiative, whether another one has preceded him or not would not affect the situation.

Trial Examiner Norwood: Do you think the ordinary play of economic forces would bring about the adoption of this thing by other manufacturers after one had prevented diversion?

The Witness: Yes, whether the one had or not, I think it would lead each one to take that action.

By Mr. Bond:

Q. Now, if some manufacturers took steps to prevent such diversion and others did not, what in your opinion as an economist would happen to the dealer business of those who did not?

44690 A. Those who did not would be subject to all of the loss of dealer good will and other difficulties which I have already described and this would be a serious loss to their business, might even be ruinous.

Q. And does the fact that for more than 20 years cement manufacturers have generally attempted to prevent such diversions indicate collusion to you as an economist, or is it equally consistent with competition?

Mr. Wooden: I make the same objection I made a few moments ago.

Trial Examiner Norwood: I think I will sustain that objection. I think you covered it by your previous question there.

44691 Mr. Bond: I offer to prove through this witness as an expert economist that in his opinion the fact that for more than 20 years cement manufacturers have generally attempted to prevent such diversions does not indicate to him collusion, and that in his opinion it is equally consistent with competition.

Trial Examiner Norwood: Yes. I am excluding that

because I think the point has already been covered abundantly, and for that reason only.

By Mr. Bond:

Q. Now, Professor, turning to another subject, what in your opinion are the economic effects that in a competitive industry and in the absence of collusion tend to cause relatively rigid prices?

A. First of all, I would think that the commodity sold would be a homogeneous commodity. I would think that there would be a comparatively small number of sellers each marketing a comparatively large amount of the total product. I would think that there would be well-informed buyers and sellers acting with energy in their own
44692 individual interests, and under those conditions I would think there would be a tendency toward—certain tendency toward rigidity of prices.

Q. Well, now, taking first the matter of reduction in price, how would those factorse affect the question of reduction in price?

A. That is, you are asking me how reduction of price would be brought about under those conditions?

Q. Yes.

A. Well, you can take first a reduction of price. Any seller knows that under these conditions if he reduces his price that reduction is practically certain to be followed by his competitors. That means that he will himself gain very little in an increased share of the total amount marketed because the only way he can gain is by offering a lower price, and he has no advantage there because his competitors have met the same price. On the other hands, the final result is going to be a lower price for all, and therefore less revenue from any given number of sales, and it is quite likely that this particular mill would find that it lost more through the lower price than it gained through its share of any possible increase in total sales in the industry.

Looking at the other side, an increase in price, it is obvious, that under those conditions no mill can maintain a price higher than its competitors. No dealer would buy if under those conditions. Therefore, a mill is going to
44693 be very careful about initiating an increase in price unless it has reason to think that its competitors will follow it so that on both sides I think that there is under those conditions an influence leading the mills to be somewhat cautious about changing price, and that brings about

what may be called, as I understand it, rigidity of price. It may often lead to a condition of stability of price which might persist for a considerable time, and which no competitors would think it was to his interest to disturb by initiating a price change.

Another element that would be very important in there would be the degree of inelasticity of the demand for the product.

Q. Is this condition which you have described sometimes referred to as a state of equilibrium?

A. Yes, I think that would properly describe it, a state of price equilibrium.

Q. Now, you have just referred to the matter of inelastic demand. What does an economist mean by the term "inelastic demand"?

A. Why, the terms "inelastic" and "elastic" demand are relative terms, referring to the effect upon the quantity that would be taken by buyers of differences in prices. The general economic law of demand is that the higher the price the less will be taken by buyers; conversely, the lower the price the more buyers would take. That is virtually 44694 a universal law almost without exception.

Now, the degree to which the price differences will cause inverse difference in the quantity bought is what is referred to by the term "elasticity of demand," and if a change in price would bring about a relative—let me change that: If an increase in price would bring about a relatively small decline in the amount purchased, or if a decrease in price would bring about a relatively small increase in the amount taken by buyers, then we say demand is inelastic. On the other hand, if changes in price produce proportionately wide changes in the quantities taken by buyers, then we say demand is elastic, and, of course, there can be all degrees of elasticity from the theoretical extremes of absolute elasticity and absolute inelasticity.

I think I ought to make it clear that this relationship is not a historical sequence, but is a number of possibilities existing at a given time and place; that is, if the price were so much the buyers would take so much. If instead of that price it were something else, buyers would take some other quantity. It does not mean that the price today is so much, and so much is taken, and a week hence or a month hence the price might be something different. In the meantime other conditions might have arisen which would account for the change in the quantity taken.

I can perhaps help further to clarify that by some
44695 illustration.

Q. Will you give us some?

Trial Examiner Norwood: Go ahead.

A. Well, the best illustration of inelastic demand that I can think of offhand would be, let us say, table salt. In general, demand is inelastic for necessities, especially if the necessities are not very expensive, so that any person can get about what he wants without running into a lot of money. Now, salt is a good example. It is a price necessity of life. The amount that anybody needs is so small and the price is so moderate that virtually all families are accustomed to have all the salt they want. If the price of salt should be very much higher than it is, it is not likely that any family would find it necessary to restrict very much its consumption of salt because the additional cost would be immaterial. The money could be saved somewhere else in the family budget. If on the other hand the price of salt were very much lower, there is no reason why any family already consuming all the salt it wants should buy any more just because the price is lower. So you have there an illustration of an article of inelastic demand.

I might add that another condition that produces inelastic demand is that condition in which the article in question is needed, not primarily for its own sake independently, but as a component in some other complex of objects. I could
illustrate that by builders' hardware, for instance.
44696 Builders' hardware is useful only as entering into the construction of buildings, and it is a relatively small part of the total cost of building, so that it is hard to imagine that any architect or builder or owner of a building would very much change the amount of his purchase of hardware for the building on account of a very considerable change in its price. It is too small a part of the total cost of the building.

Now, on the other side, elastic demand is generally true of luxuries, however not always. It is if the luxury is also an article of rather high price, the demand is apt to be elastic. Take such a thing as a washing machine, for instance. Now, there is an article which is very convenient, very much desired. It is pretty expensive, and a good many families, in spite of its convenience, cannot afford it at the present price, and a good many other families can just about get it into the family budget, but they do have it

Now, you can see that if the price of washing machines should be very much higher than it is a whole lot of these families that now use it would find they could not afford it. On the other hand, if it should be materially lower than it is there probably is a very large number of families just below the line, not quite able to afford it, who now would find that it was worth their while to purchase. There you have an example of elastic demand.

I am afraid I have run into a pretty long dissertation here.

44697 Trial Examiner Norwood: Would sugar be in the same category as salt?

The Witness: Very much the same, yes, sir.

Trial Examiner Norwood: Wheat in the same way?

The Witness: Wheat is a little different because there are so many substitutes for wheat.

I might perhaps have added, which could have been inferred from my illustration of salt, that you do not have a readily available substitute, but for wheat there are all the other grains, even meat is to a certain extent a substitute for cereal food, so when you take a particular article like that, even though it is a prime necessity, you do not necessarily get inelastic demand. You will get inelastic demand from some things which are not necessities. The frivolous example of the lipstick occurs to me, if you will accept my assumption that that is not a necessity, and about the same reasoning there applies. Any girl can have about all she wants for a moderate price. She won't be induced to buy any more from a lower price and she probably won't be deterred from its beautifying effects by a probably high price, so that not all articles of inelastic demand are necessities. Tobacco is a very good example. I do not need to elaborate further, however.

By Mr. Bond:

44698 Q. Now, from your studies of elasticity and inelasticity, Professor, would you agree with the testimony of one of the economists who testified as a witness for the Commission to the effect that in his opinion the demand for cement is an elastic demand?

A. Why, no, sir; I would draw just the opposite conclusion. I think it is common knowledge that cement is used as a component part of construction, and that even in those construction lines in which it is most important it is a relatively small part of the total cost, so that it would seem to

conform precisely to the example of builders' hardware which I cited a moment ago. I should think for that reason the demand for cement was definitely an inelastic demand.

44700 Q. Well, then, Professor, in your opinion would a condition of inelastic demand in an industry such as the cement industry have any economic effect on the tendency towards rigidity of price?

A. Yes, sir; it obviously definitely would. I have already described the general conditions which under assumptions before me would tend toward rigidity of price in an industry such as the cement industry. Now, if added to that we have a condition of inelastic demand, that means that a reduction of price is going to have comparatively little effect in producing an increase in the total amount of the product consumed, and, therefore, whatever gain one mill might expect to have from a general increase in the sales of the whole industry, even though it still did not get any more than its former share is minimized.

I can imagine the case of an article of a very elastic demand in which a mill might think it worth while to initiate a price reduction even though it would be met by its competitors if thereby there would be such a tremendous increase in the volume of sales that even at the lower price

44701 which they would all have to take they would be better off; that would simply mean in that particular mill's opinion it was time to try to expand the market by a lower price. But, you see, if the article is one of inelastic demand that possibility is virtually ruled out, so the result of a price reduction met by all the competitors is that the mill initiating it does not gain on either side, it does not get any more than its share as before, and there is not any larger quantity to be divided up among them, and so whatever tendency to price rigidity were already present would be very much strengthened if this article is one of inelastic demand.

Q. Now, I think you have made it clear, but in order to be certain, let me ask you whether economists when they talk about elastic demand and inelastic demand are referring to the share of the market which each producer obtains or are they referring to total demand for the product?

A. Well, we economists use the term in both ways. If there were no qualifying word attached, the assumption

would be that we were referring to the total demand of the market, of buyers.

Q. Then, it is on that basis that you have been answering these questions about what is meant by elastic and inelastic demand?

A. Yes, I have had that idea in mind all the time. The other meaning would be the elasticity of demand of a particular seller's product; for instance, the elasticity of demand for Ford cars in competition with Chevrolets
44702 and Plymouths, we will say in that class. Now, there is a total demand for all cheap cars from all buyers in that class. Each seller, however, in an article like this, which is not quite homogeneous has his own demand conditions, and so it is possible for us to speak of demand with respect to the purchase of the product of a single seller, but that concept of demand has not come into any of my answers thus far.

Q. Now, assume that in the cement business most companies have outstanding large obligations on specific job contracts, and that all of these contracts contain a clause giving the buyers the benefit of a decline in price, so that if the manufacturers' commercial market price at point of delivery declines they are forced to reduce the price on contract cement that they have agreed to deliver for a long period ahead, would an economist expect these facts to have any influence upon the presence or absence of rigidity in price?

A. Yes, sir; that means, as I understand the assumption, that if a mill reduces its price it not only takes a lower price on all of its future sales, but it also has to accept a lower price on sales that have already been made or contracted for, so that the reduction in revenue from a reduced price is thereby increased, and other things being equal the tendency to make the reduction is correspondingly reduced, and that is a contributing factor toward stability of price or rigidity.

Q. Now assume that the cement manufacturers,
44703 most of them have on their books contracts for delivery in the future over a period of a year or more large quantities of cement, the contract stipulating a maximum price so that in the event of an increase in commercial price manufacturers do not get any advantage at all on

that increased price on their contract obligations, would an economist expect these facts to have any influence on the question of relative rigidity of price?

A. This situation I should regard as the opposite corollary of the one put to me in the previous question. Now, the manufacturer contemplating an increase in price cannot count on an increase in price in all of his future deliveries of cement, but on a large part of his sales for a considerable time in the future he will get the old price; therefore, whatever advantage would otherwise have seemed probable to him through raising his price now seems less to him and he has less inducement to raise the price, and so we have another influence tending toward holding the price rigid.

Trial Examiner Norwood: Well, now, suppose he is losing money on this contract and he wants to even it up, wouldn't that be one way of doing it?

The Witness: I thought the assumption was that he had to stick to this contract whether he is losing money or not.

Trial Examiner Norwood: Yes, he has to, and he is losing money on it, then wouldn't one way to even
44704 things up, recoup, be to raise the future price to regular customers?

The Witness: Well, he would have just the same inducement to do that whether he was losing money on some other contracts or not. I take it any mill would be glad to increase its revenue by raising prices, if it thinks it will do so and whether your contracts already entered into are profitable or unprofitable would not make any difference.

Trial Examiner Norwood: The existence of this contract would have a deterrent effect on raising prices?

The Witness: I think it would; yes, sir. The fact that he does not get the advantage of his increased price on a good deal of cement that is going to be sold in the future, but the contract is already made. Those are irrevocable. You cannot do anything about that, and your policy of raising or lowering prices to get more revenue would still have to be decided on its own merits.

44705 By Mr. Bond:

Q. Now, assume that in the event of a price advance it is the custom of the industry to give several days' notice broadcast to the trade of the effective date of such

price advance, and that coupled with that it is also the custom to permit dealers to place orders within that period for all the cement for which they will take delivery within 15 days thereafter.

Would an economist expect that these factors would have any influence on the question of relative price rigidity?

A. Well, these factors also would tend to take away somewhat from the advantage to the mill of higher price in that a very considerable part of its sales in the near future would be not at the new advanced price but at the old price, and so the inducement to raise the price would be diminished, and, again, there is an influence tending toward rigidity.

Q. Assume further that it is the custom in the industry to protect the dealer on price declines on cement recently purchased, either in transit or just received, so that on such declines substantial credits have to be given on all recent shipments.

Would an economist expect this to have any effect on rigidity of price?

A. That goes again to the other side and tends to make more costly than otherwise a price reduction, because now the price reduction means not only that cement con-
44706 tracted for in the future will be sold at the lower price, but a good deal of the cement which otherwise would have been sold at the old price now has to be sold at a lower price than would otherwise have been obtained; and so the inducement to lower price is diminished, and, again, there is an influence tending toward rigidity.

Q. Now, assume that the results of price reductions in prior years have shown that frequently a price reduction by one producer is not only met by competitors but that they in turn fix a still lower price.

Would an economist expect this to have an effect on rigidity of price?

A. In an industry like this, in which action by any mill has its repercussions in the action of competitors, the condition assumed in your question would mean that any mill contemplating the initiation of a price decline would have to face not only the possibility of an immediate meeting of that price by its competitors but of even the establishment of a price lower than the price which it proposed to

set. And giving due consideration to that possibility, it might very well deter some mills from initiating any price reduction at all. And, so, again there is an influence tending toward price rigidity.

Q. Now, turning to a somewhat different problem:

Assume that in the cement industry a large majority of the cement is sold to dealers, so that dealers as a
44707 class have been characterized as the backbone of the industry;

And assume that some manufacturer offered to dealers some marketing practice that would seem to dealers more advantageous to them than the practice formerly followed by this manufacturer or by his competitors, such as more favorable discount, or a classification of business that gave the dealer a larger proportion of the manufacturer's business than other manufacturers were giving him.

What, in your opinion, would be the economic result to another manufacturer who did not change his practice so as to give at least equal advantage to his dealers?

A. That other manufacturer, I should suppose, would find that his customers were inclined to leave him and go to the other mill that offered more favorable terms, and so he would lose trade and suffer loss in his business.

Q. And would his action in this respect seem to you to be consistent with the following of his individual self-interest?

A. Yes. I should think his natural reaction would be to try to meet those terms offered by a competitor as best he could, and that there is no reason why one need infer collusion to lead him to take such action, which he would take, I should suppose, solely in his own individual interest.

Q. Is there, then, in your opinion, in the cement industry any economic necessity that all such trade practices should be uniform?

44708 A. I think there is economic necessity that competitors will strive to meet those practices of their competitors so far as they can, and therefore there is a strong tendency toward uniformity. Absolute uniformity might not be reached, but there is a tendency toward uniformity in all practices in which one competitor is able to meet the practices of his competitors.

Q. Assuming that marketing practices, such as discounts, classification of business between sales to dealers and sales direct to consumers, and so forth, are uniform as between competing manufacturers, will you state whether or not such uniformity raises an economic inference of collusion?

A. No, sir; that seems to me to raise no inference of collusion. In fact, the tendency toward uniformity of such sales practices as those seems to me to be economically of no different character than the tendency towards uniformity in price.

By Mr. Bond:

Q. Do you consider that there is any relation between the relative intensity of competition and the uni-
44709 formity of practices of this kind?

A. Yes, sir. I should think that the more vigorous, active competition is, the more likely would be the arrival at uniformity in matters of price and trade practices, and so forth.

Q. Now, Professor, witnesses for the Commission have testified as to the possibility of selling cement through central exchanges, or by zone prices, or by postage stamp prices.

In your opinion, would any of these methods of marketing be practicable in a heavy industry such as the cement industry?

44711 A. It would seem to me that neither the postage stamp method nor a zone system, with the zones of any appreciable area, or the central exchange system would be practicable in an industry of this sort, largely because of the important element of freight in the total delivered cost.

Q. Now, we are charged in the complaint, Professor, with having engaged in practices which resulted in a lessening of competition. How would you as an economist approach the problem to determine whether or not competition had been lessened?

A. When one says that anything has been lessened, that implies some comparison. And if I were inquiring into the question I would first of all want to know what is the basis of comparison.

Now, thinking of that, I can conceive that one might

compare the amount of competition under the present
44712 basing-point system with that which existed at some time in the past before this system was introduced, but I gather from certain hypotheses that have been put before me that the basing-point system has been actually in effect for quite a long time, and if I went back to the early period before it was in effect I am sure that I would find so many other conditions different that it would not be the basis of any comparison as to this one particular matter of the effect of this basing system as to the amount of competition. It seems to me, then, that that historical comparison is hardly practicable in this case.

44713 Q. Professor, did you finish?

A. No, I did not quite finish.

Trial Examiner Norwood: Go ahead.

A. (Continuing.) I think what I had to say went to the matter of historical comparison. If that is ruled out, as I seem to find out that it is, then about the only other comparison I can think of is with some other conceivable or possible marketing method, and one might inquire as to whether hypothetically the basing-point system presumably creates less competition than would be created under some other marketing system.

44721 Q. Now, Professor, apart from these other methods of marketing, which you stated a moment ago were not, in your opinion, practicable in an industry such as this, what other possible marketing method or methods can you suggest as a basis for making such a comparison to determine whether competition has been lessened?

A. The only other method that I can think of would be uniform f. o. b. mill base. I say "uniform" because it is hard for me to see how any mill could get along well maintaining cordial relations with its customers and dealers that did not have uniform prices if it went out on f. o. b. mill basis.

Mr. Wooden: Your Honor, I have to strike the question and answer, because it is obvious on the face of it
44722 that the witness is unable to conceive of things which the law specifically permits, and he is not making a comparison with what the law specifically permits, but something which he assumes the law ought to prohibit.

Q. Assuming that the cement industry has for many years been operating on a delivered-price basis, how, in

your opinion, would it be possible for the industry to change over to the f. o. b. mill basis?

A. I do not see how that change could be made, except by a legislative requirement, or by collusion or agreement among the mills. My reason for that is that it seems to me that if any one mill on its own initiative went over to the uniform f. o. b. mill basis, its position would be untenable. It would immediately have to consider whether it would try to hold its dealers in those destinations
44723 outside the territory in which its base price formerly controlled and in which it was absorbing freight. In order to hold those it would have to make the uniform price—f. o. b. price at its mill low enough to meet the delivered price in many destinations which were determined by some other base mill. To hold all of its sales it would have to make its f. o. b. mill base equal to the lowest delivered price it was getting plus freight, which would make so drastic a reduction in the price it would charge to its customers in its own neighborhood that I should think the result would be ruinous.

What would presumably happen would be that the mill would simply decide that it would have to sacrifice a great many of its dealers at destinations where it was formerly absorbing freight, and, having done so, it would lose a large volume of its business. At the same time, since its other competitors had not followed it,—and I have every reason to suppose that they would not,—its competitors would still be free to invade its territory on a freight-absorbing basis. And I should think that any one mill which undertook alone to make this change would find it so much a cause of loss that it would quickly retrace its step and go back to the former base pricing system.

I have possibly put the cart before the horse, but that is the reason which leads me to the conclusion that only if in some way or other all the mills could be induced
44724 to make the change at once could the change be made, and I can see only two ways of getting them to make the change simultaneously: One, Government requirements; the other, agreement among themselves.

Q. Now, assuming, Professor, that the cement industry sold on a uniform f. o. b. mill basis, what, in your opinion, would be the economic effects of such a marketing method on the marketing area of each producer?

A. Each producer now under the basing-price system

not only, if it is a base mill, sets the price within a certain area, but it also goes out into the areas in which other base mills have set the price and make sales on a freight-absorbing basis. And, vice versa, each mill is confronted with the same sort of invasion of its own territory by other mills.

As a result, it must follow that over very wide areas many mills are competing for the custom of dealers,—some on a freight-absorbing basis, some as base mills determining the price, some as non-base mills meeting the price.

Now, under a uniform f. o. b. mill basis this would virtually all disappear. Each mill would be able to deliver at any points at which its f. o. b. price plus freight was lower than some other mill's f. o. b. mill plus freight to
that same point, and neither mill would be able to
44725 go beyond that, except by adding to its cost the
freight and suffering a loss, or else reducing its own base price. If that were done, that would simply enlarge the area of that particular mill and leave us just where we were before, with the area in which each mill could sell largely exclusive in relation to other mills.

Now, the result of that would be that in very large areas and very many places there would never be competition between mills. In most places I should think the dealers would find themselves able to purchase only from one mill.

Trial Examiner Norwood: Now, would those conditions obtain if each mill were privileged to make varying f. o. b. mill prices to meet competition at these various points?

The Witness: I think they would, Your Honor, because I can't conceive that a mill would, even though it had the right to do so, actually put into operation a practice of multiple f. o. b. mill prices. It seems to me that that would arouse such protest and complaint from any purchaser who found he was having to pay a higher price right at the mill than some other purchaser also right at the mill that no mill could stand that pressure, and the loss of dealer good will would result. That is why I am answering this question entirely on the basis of a uniform f. o. b. price.

By Mr. Bond:

Q. Now, you have told us what, in your opinion,
44726 the effect on market area was. Let me ask you, what,
in your opinion, would be the effect of such a marketing method on the price?

A. I think I have already testified in answer to your

previous question that, in connection with the effect on marketing area, there would be a drastic reduction in the amount of competition at many of the, not most or all, destinations.

Now, competition is about the most powerful force we have that tends to hold prices down somewhere near to the cost of production, and I feel confident that any cause which reduces competition also tends to thereby reduce the influences that are holding prices down, and leads to the probability that prices will be higher to the dealers under this system than under the present basing-point system.

Q. Now, assuming, Professor, that all mills were selling on the basis of a uniform f. o. b. mill price, and that due to a peak demand within a particular mill's market territory, which demand that mill was unable to meet, so that a portion of the supply had to come from distant mills, what would be the effect on the delivered cost to the buyer under such circumstances?

A. First of all, the mill in question might very well—very likely take advantage of the situation to raise its f. o. b. price finding itself able to sell more cement than it could produce for the time being. That might not occur. If this condition of peak demand were regarded as only temporary and of probable short duration, I 44727 think it might result that the mill would decide not to incur the risk of customer ill will by raising its base price. But, at any rate, there is that possibility that the base price itself—the f. o. b. price might be raised. If not, and in any case, the buyers in this particular place whose demands in total could not be met by this mill would have to order their cement from some other mill outside of this mill's territory, and the price they would pay would be the price of that other mill plus the additional freight to bring the cement some distance into the first mill's territory.

Under the basing-point system that purchaser would be in contact, if he wished, with the salesmen of these distant mills all the time, and they would be prepared to send cement in there without any increase in price, but simply meeting the price set by the base mill that controlled in the neighborhood.

So that I should suppose that if this situation were in effect from time to time, as peak demands exceeded the ability to meet the demand on the part of the nearest mill.

buyers will be frequently compelled to pay higher prices than would be necessary under the basing-point system.

Q. Now, suppose, Professor, that this uniform f. o. b. mill method were combined with the present method of selling on delivered prices, and the buyer was given his option as to which basis he preferred, would you expect him to examine that option carefully?

44728 A. Yes, I think he would give very careful attention to it before he placed his orders or decided how to buy.

Q. And for what purpose?

A. He would want to decide which form of purchase would be the more to his advantage.

Q. And what items would you expect him to weigh and compare under such circumstances?

A. Well, first of all, he would naturally compare the total over-all cost of getting the cement delivered where he wanted it as between buying it on a delivered basis, with freight included in the price, or buying it f. o. b. mill and arranging for its transportation.

He would think also of possibly the question of quantities. There might be some differences between these two methods in the terms as to quantities that should be bought. If so, that would be a pertinent consideration.

He might think of—well, he might think of elements of service. There might be some difference as to prompt delivery of the cement, or some other item of service, between these two choices.

He would have to think of the matter of possible loss in transit, who would bear that loss or be responsible.

Those are about all I can think of at the moment.

Q. Now, would you as an economist expect a purchaser to exercise his option to buy f. o. b. mill if it resulted 44729 in a higher delivered cost to him?

A. Certainly not.

Q. Well, then, Professor, what, in your opinion, would be the effect of setting up such an option under which the buyer could choose whether he would buy at this uniform f. o. b. mill price or would take it on a delivered price basis?

A. I think each buyer would have to examine the whole situation and come to a decision every time he was contemplating the purchase of cement. Some buyers would

decide on one course; others on some other course.

44730 Some buyer might sometime decide to buy one way and another time a different way. There would result, I should think, very considerable confusion in the marketing of cement. I would think that dealers would have naturally different facilities for bringing cement to their warehouses, or to the place where it was to be delivered, and contractors would be differently situated.

For instance, some would have better opportunities to use trucks than others would have. And as competitive dealers especially saw how some of their competitors were taking advantage of a situation which they were not in a position to take advantage of, they would be displeased and probably make complaints. The salesmen, I should think, of the mills would always be in more or less of a state of uncertainty as to what they could offer and what their customers might find to their interest.

And I would suppose that under those conditions there would gradually be a tendency for the dealers to lean more and more toward one method than the other, whichever on the whole turned out to be more favorable; and that if there were any general inclination to go one way or the other, eventually the mills, themselves, would undertake to make that the regular method, and perhaps eventually not permit the other method, and go back to one method or the other.

44731 Q. Professor, at points in the testimony an attempt has been made to distinguish between "competition" and "price competition." Is there any recognized economic distinction of that kind?

A. As a distinction between two different kinds of competition, or two classes into which competition can be divided, I think there is no such distinction.

Obviously, what the buyer and the seller are interested in is the quantity and the quality of the product plus any incidental services or what not that may go with it, on the one hand, and the amount of money that has to be paid, on the other. No buyer is going to buy anything unless he considers both the price and the quantity and the quality, and no seller is going to consider a sale unless he also has definitely in mind both the quantity and quality of the good as well as the price.

Now, you can't talk of price competition as one kind of competition, because price is always a consideration. Even

though price might remain unchanged for a long time, even though the prices of all the competitors might be the same, there might still be conditions in the quantity or the quality of the product, and that is just as
44732. much a matter of price as if the price varied.

In other words, if the amount of the product given for one dollar is cut in half, and the price remains one dollar, that has exactly the same effect as doubling the price. And so far as buying and selling, so far as the attitude of sellers and buyers, so far as the operations of the forces of demand and supply go, those things have all got to be taken together.

And I think from that point of view there is no sense in saying that price competition is a peculiar kind of price, and that there is another kind which is non-price competition.

Now, I am aware that the term is used sometimes by economists in a different and somewhat restricted sense. One may want to call attention to the fact that at a given time the efforts being made by competitors to induce buyers to buy of them are directed in certain lines. Sometimes they are directed through offering a lower price; sometimes they are directed through offering a larger quantity; sometimes—

Trial Examiner Norwood: Now, if they were directed solely through offering of different prices, other services and everything else being the same, what would you call that?

The Witness: I would call that competition. And if anybody would ask me if it was price competition, I
44733 would say it was, because all competition is price competition.

Trial Examiner Norwood: I see.

The Witness: Now, to return to the supposition I was making. Suppose that at a given time competitors are meeting their buyers by offering price inducements. Then we may, if we wish, describe that condition as price competition, if we are perfectly clear what we mean. It is not a different kind of competition, but we have just put a label on it to indicate, for price purposes, that the inducements being offered are concessions in price.

By the same token, by saying from the price being changed there is quality competition, or some other term that you might think of that would describe that condition,

that the inducements for the article offered to buyers are variations in quality, I have no fault to find with the use of the term "price competition" in that sense. In fact, I strongly suspect that in my own publications I have used it in exactly that sense, but I feel quite sure that I have very carefully defined the term so as to make clear that I am not thinking of a different kind of competition.

All competition involves the matter of price, and in that sense, the only fundamental sense, all competition is price competition.

By Mr. Bond:

44734 Q. Professor, assume that the testimony has shown that at any given point where there is demand for cement the representatives of different manufacturers are each calling upon the trade individually to secure the business for their respective companies by building up purchaser good will through prompt and efficient delivery, the satisfactory handling of claims for losses or shortages and of allowances for returned bags; by assisting the dealer in making sales; by securing prices for a dealer or contractor on commodities other than cement needed for a specific job; by supplying free water or other items for use on the job; by the use of the most convenient type of package; by the use of the most convenient type of railroad cars for bulk shipments; by shipments in proprietary trucks in small lots; by calling to the purchaser's attention jobs where cement would be used; by rendering service to the purchaser in the form of engineering services and assisting him in other ways in the handling of cement.

Would you say that under such conditions price competition was present, even though the amount in dollars and cents demanded by the different salesmen was identical and all other terms of sale were identical?

44738 A. Yes, sir. I think competition prevails. And if the issue were raised, as you have raised it in the question, I would say it is price competition.

As I understand it, a company which is contemplating buying cement will find it can buy from company "A" at so many cents a barrel; it will have certain trade arrangements, which are so and so. It will find that from company "B" those matters, price and others, are

44739 identical. Also, I assume, of course, that the cement is homogeneous. This buyer will then pass in review

these various items of services which have been stated in the question, and if he decides that he will get better service from company "A" than from company "B," that is price competition. He does not decide to buy from "A" or buy from "B" until he has considered the price. A uniform price, with other considerations which are different, is, so far as competition goes, to the same effect as a different price when everything else is the same.

Trial Examiner Norwood: Your answer would be the same if the question of bags were eliminated?

The Witness: Oh, yes. There are many other hypotheses there which would lead to the same answer.

44740 By Mr. Bond:

Q. Professor, would you as an economist distinguish between an act of price competition and condition of price competition?

A. Yes, I think I would. Sellers may be in competition with each other, in a state of competition, even though at the moment no overt act, no competitive act is being taken. There may be a condition of—a stable condition in which nobody is offering a different price or any other different condition, and yet those competitors are all standing by ready to take action at any moment as it may be dictated by their interest. I think a helpful analogy perhaps would be two armies facing each other across no man's land, we would certainly say they were in state of war even though acts of war, such as shooting at each other, were not taking place, so I should say we might have a state of competition as distinguished from competitive acts.

Q. Now turning back for a moment to the subject of delivered prices. If you have delivered prices in an
44741 industry, would you as an economist say that it was necessary that those prices follow some pattern?

A. I should think so; yes, sir. If they did not—if each mill were making different delivered prices here and there according to some local conditions in demand, or otherwise, I should think they would get their whole marketing enterprise into a state of more or less chaos. Dealers would not know where they stood, their own salesmen would not know, and very soon they would find that they had to have some rule which was followed by which the determination of the price they would offer at different

places was worked out in some sort of regular and understandable way.

Q. Now, let me ask you, are there certain conditions under which you as an economist would expect a commodity to be sold by the use of basing points?

A. Yes, several conditions which I think would be natural to assume. First, I would expect that there would be a state of competition.

44742 A. Continuing, I would say that first of all I would expect a state of competition; secondly, I would expect that there would be a comparatively small number of producers each one producing a large output. I would expect that these mills or producers would be geographically separated, scattered about over the country, and that there would be many buyers at different places throughout the country. I would expect that each mill would have a capacity in excess of what would be required to meet the demands for the product in its own immediate locality, and I would expect that there would be in the costs of production a considerable amount of overhead costs.

I might add what is perhaps almost implied in the question itself, that this is a homogeneous commodity. Under those conditions I would expect it natural for the basing-point method to arise.

By Mr. Bond:

Q. Did you mention as one factor that it was a heavy commodity?

44744 A. In answer to the last question, I should say that another condition is that the product is a heavy product so that freight is an important part of the delivered cost, but at the same time not so very heavy in proportion to its value that it could not have more than a strictly local market.

By Mr. Bond:

Q. Now, if you have in an industry a method of selling by the use of basing points and delivered prices, such as was described to you in my long hypothetical question, do you consider that any method of policing is necessary to make that method work?

A. No, I should not think it was. The one essential is that the different sellers and the buyers have a very large degree of information. If they have that I should think each seller could apply and carry out the basing-point

method and would do it under his own motives of self-interest without being compelled to do so by any authority.

Q. Turning to another subject, Professor, do economists recognize that competition is accompanied by
44745 certain economic wastes?

A. Yes, I think they do.

Q. Professor, when you speak of wastes of competition, in what sense do you use the word "wastes"?

A. I think of a waste as an unnecessary cost. When you talk of wastes you have to compare it with perhaps an ideal method of production. Now, the ideal may be the point of view of public interest, from which point I think we naturally approach this question of waste is such an organization of production as will produce the
44746 goods that the people want at prices which are not much above their cost of production and at the lowest possible cost.

Now, if any particular method of production, of distribution of marketing, is incurring costs which would seem not to be accomplishing anything in the way of producing a market or which under some other system might be avoidable, I would call those wastes of production.

Q. Now, when you have spoken of cross-hauling in your testimony, in what sense were you using that term?

A. I used that in the sense that one mill is delivering to a certain point in another mill's territory, and another mill is delivering at a point between the point at which the first mill is delivering and the location of the first mill, so that substantially there is a hauling of material in two directions over about the same route. I would not say it had to be precisely the same route. They might be parallel and some distance apart. That is my idea of cross-hauling.

Q. And is any time element involved?

A. Yes, I should think near enough at the same time so that it would not apply any change in conditions or so that it would not mean that at one period one mill was delivering a certain point, and at some entirely different time the other mill was delivering.

Q. And in thus defining cross-hauling, do you or
44747 do you not assume that there are no differences in color or other matters that influence the buyer to prefer one mill's product over that of the other?

A. Yes, sir; I was assuming a homogeneous product.

Q. And would you say that in your opinion cross-haul-

ing is any more important than the other wastes of competition?

44748 A. I think the relative importance of different wastes depends upon the amount of the costs rather than the character of the wastes, so that the question would be whether cross-hauling was more costly than some other waste with which you compared it, otherwise it is no more important than other wastes.

By Mr. Bond:

Q. Well, would you say that the total of the amount of freight absorption, if that could be obtained, would represent the amount of cross-hauling in an industry?

A. No, sir; not as I have defined the term "cross-hauling." I can conceive of some freight absorption that would not involve cross-hauling.

Q. Well, would it in your opinion be an easy matter to determine the exact amount of cross-hauling as you have defined it?

A. I should think it would be very difficult indeed.

Q. Referring to these different wastes that you have described, could, in your opinion, any of these in-

44749 cluding cross-hauling be eliminated without affecting the degree of competition that exists when they are present?

A. No, sir; I do not think they could; if they are the natural results of competition any restraint which forbade them would interfere to that extent with the process of competition.

Q. Professor, if you were examining an industry as an economist to determine whether competition exists in that industry, for what elements would you look to ascertain its existence?

A. Well, I think the basic question that I would ask first of all would be whether this industry is successful in producing the goods that the people want at as low a cost as practicable and selling them to the people at a price which is not above the cost of production except by the amount of a reasonable or normal profit. To be specific, you might look for particular indications signifying the presence of competition, such as activity of salesmen, advertising, activity in making inventions and technological improvements. If I found that customers were shifting quite frequently from one seller to another, I would take that as an indication of the presence of competition. It

might even be possible that at some time in face of rising costs of production prices did not rise correspondingly, and I would infer from that situation, in the absence of other evidence, that that might be the result of
44750 competition which was preventing the price from rising.

Q. How about the occasional granting of secret prices below the openly quoted prices?

A. That if I should find that in any situation, I would think that was another indication of the presence of competition.

Trial Examiner Norwood: Would secret prices indicate the presence of open competition?

The Witness: Well, isn't that a contradiction of terms, Your Honor?

Trial Examiner Norwood: I don't think so.

The Witness: I do not think, right offhand, of the technical definition of open competition.

Trial Examiner Norwood: Would secret prices be an indication of competition if it was not secret?

The Witness: Well, so far as the prices were secret, I think it would be an indication of a state of competition. Now, I do not have quite in mind what is meant by secret or open competition.

Trial Examiner Norwood: The giving of a secret low price is competition itself, isn't it?

The Witness: I think so. Yes, whether the inducements offered by any seller to attract buyers are secret or open, it is still an indication of competition, I should say.

Trial Examiner Norwood: Well, would it mean
44751 anything to you to find that price reductions were only given in secret, or given in secret only?

The Witness: Yes, you asked me—

Trial Examiner Norwood: What would that suggest to you as to the competitive condition generally?

The Witness: You ask me to assume a condition in which openly prices are uniform.

Trial Examiner Norwood: Yes.

The Witness: But there is secret cutting. That would still indicate to me a condition of competition. I would not be able to tell from the hypotheses why the sellers confined their cutting to the secret cases, but I would have no hesitation in taking it as an indication of the presence of competition.

Trial Examiner Norwood: That is all that it would indicate to you?

The Witness: Oh, no, it might indicate many other things to me.

Trial Examiner Norwood: What other things?

The Witness: Well, it might indicate the presence of some circumstance which I would not be able to name from the hypotheses, which was making the companies unwilling to announce openly the price reductions. I could not say what that circumstance might be from this hypothesis.

44752 By Mr. Bond:

Q. Now, turning to the matter of overhead costs which you referred to this morning. What is meant by the term "overhead cost," to an economist?

A. I am not sure that economists have agreed upon a technical definition. In fact, I think economists generally use the terms "fixed costs" and "variable costs" instead of "overhead" and "direct." And I think even the accountants do not use the term "overhead" so much. However, if we did use that term, and economists very frequently do, I think it would mean practically the same as the term which I prefer, namely, fixed cost. In other words, those elements of costs whose amount does not vary substantially with the amount of the output of the pro-
44753 ducer as distinguished from the variable or direct costs, whose amount varies relatively closely with the amount of the output.

By Mr. Bond:

Q. Can you name some of the principal items that would go to make up that conception?

A. First of all, there is interest on the capital invested. Then, there are various managerial salaries, salaries of high officers of the company who have to be engaged and on the job whether the production is large or small as distinguished from salaries lower down the scale and especially wages, which rise and fall with the amount of the output. Insurance is generally an overhead cost. Depreciation is generally an overhead cost, when depreciation is rated on the basis of time, as when you age your equipment and depreciate it on the basis of time, then it is overhead. If you depreciate your equipment on the basis of use, as for instance a company might depreciate a truck on the basis of mileage instead of age; then depreciation,

you see, becomes a direct and running cost. Taxes are, some of them, direct, some of them overhead like property tax.

Trial Examiner Norwood: Well, isn't it every expense that does not vary with the volume of production?

The Witness: Yes, that is the general principle, very substantially, but I was asked to give a few examples.

By Mr. Bond:

Q. Well, in general, would it be true that the greater the plant investment required relative to the unit production cost the higher the overhead cost would be?

A. Yes, that would be true; another way of putting it would be the greater the overhead cost in proportion to the total output of the concern, which would come to the same thing.

Q. Now, what effect, if any, in your opinion, does a high overhead cost have on the marketing problems of an industry such as this, as it was described in my long hypothetical question?

A. Well, such an industry has a plant capacity greater than enough to meet the local demand, it is making a product homogeneous with that of its competitors, it has a high degree of overhead cost, it is able to use the method of freight absorption, and under those conditions it would use the method of freight absorption and go out into territory more distant from its own plant, and there offer to sell at prices which would not cover all of the cost, including transportation, of course, to destination, and the average overhead, the overhead being already taken care of on the sales within the mill's own region. It is profitable for that mill to go out and get a return which may be less than the total cost, including overhead, so long as it is not less than the variable cost. Any margin above variable cost is all to the good and helps to meet the overhead even though it does not go to the whole way. I think it is conceivable that such a mill might in some cases even go out and sell for less than the variable cost, but that would be a temporary thing, to gain or hold a market, or something of that sort, but there is constant inducement, and it is regularly profitable if you can to make sales outside of your territory which do not break the price in your own territory, leave that competent to cover the overhead and bring in some return which is in

excess of the variable or some, say, out-of-pocket costs involved in the distant sales.

Q. Now, while we are on this matter of freight-absorbing sales, let me ask you to turn to the problem of dumping on which Dr. Viner testified, and I will first ask you how you would define the term "dumping."

A. I define dumping as selling at a distance from the location of the seller at a price which produces a mill net less than is produced on the sales in the immediate neighborhood. I recognize that I am indefinite there in not laying down an exact frontier dividing those two regions, but I think that is not required by the answer.

Q. Well, in other words, Professor, would such a definition include all of these cases of freight absorption?

A. Yes, sir; I think dumping includes all of those. I might add that the word "dumping" is actually
44756 more commonly used in connection with the sale by a seller in a foreign country; that is simply the custom which has led to that use of the term, and I think the term "dumping," as so used, has been often connected with the idea of protection to home industries, and all that, and has perhaps been given some sinister connotation on the part of those whose sympathies are in favor of protection, and I would want to say that no such connotation would attach to the term when applied to freight-absorbing sales within a country, but apart from that the two things are precisely the same.

Q. Well, does such dumping have any relation to this matter of high overhead costs that you have been referring to?

A. Yes, sir; I think the presence of high overhead costs is the basic condition which makes dumping profitable and possible.

Q. Now, in your opinion, what relation does such dumping have as to total costs and to the foreign market price?

A. Do you mean the total cost of the producer or seller?

Q. Of the producer.

A. Well, the effect of dumping is to add to his costs by the amount of the additional variable costs which are occasioned by the product dumped without any corresponding additional overhead, so that for reasons which I have already stated it becomes profitable if the net is some-
what more than the variable cost. As it affects the
44757 cost of the goods to the consumers or the price which the consumers pay, the effect of dumping is to intro-

duce a new competitor into that territory in which the goods are dumped, and in the long run it is to be presumed that the presence of additional competition would have a tendency to lowering prices. The dumping concern might go into this outside territory and simply meet the price existing as it found it there, and so have no immediate effect on price, but eventually in the long run if it does not lower the price the presence of that additional competitor is apt to be a factor shaping further increase in price so that the general principle is that the presence of dumping is a tendency towards lower price to the consumers.

Q. Now, taking these freight-absorbing sales which you have included in your general concept of dumping, in your opinion would the economic effect of this dumping in national trade by freight-absorbing sales be similar to the economic effect of dumping in international trade on the price of goods?

A. Yes, I think so far as the fundamental economic consequence goes they are identical. It does not make any difference whether the goods are shipped across an ocean or over a political frontier, or whether the shipping is all in the territory of a single political jurisdiction.

Q. And that effect on price, then, in the case of these freight-absorbing sales would be what, in your opinion?

A. In my opinion the freight-absorbing sales 44758 have the effect of increasing the degree of competition at the destination point, and so have a general influence leading toward lower prices to the consumers at that destination.

Q. Now, if Dr. Viner testified, page 15632-3, that the systematic practice of dumping can occur only when there is monopoly control in the market at which the commodity was being produced, would you agree with this conclusion?

A. No, sir; I would not. I do not see why any individual concern under the conditions which have been enumerated, finding it profitable to itself to make these dumping or freight-absorbing sales, would not go ahead and do it without getting into communication first with its competitors or by any combination or agreement or collusion with them.

Trial Examiner Norwood: How would dumping have the tendency you mention here to increase competition with respect to an inelastic commodity?

The Witness: Inelastic demand, do you mean?

Trial Examiner Norwood: Yes.

The Witness: Well, my basic thought is, Your Honor, that the process of dumping brings into the territory where the goods are dumped a new seller, and from that point on regardless of the character of demand, whether it is elastic or inelastic, I rest on the fundamental principle that competition has a general tendency to keep the price down to the consumer, or to prevent the price from
44759 rising, so that I would say I believe it is immaterial whether the conditions of demand are elastic or inelastic, the basic thing is that you have got more competitors there. It is going to be more likely that somebody will some time decide to make a price cut and bring the rest down. It is also going to put the brakes on the fellow who thought he was going to raise prices if he has got his foreign competitors right there who may not follow him, and they gobble up the market which he deserts when he raises his own price.

By Mr. Bond:

Q. Would you say, Professor, that when dumping occurs in international trade the dumped goods are never sold in the foreign market at the going price in that market for domestic goods?

A. No, no.

Q. In dumping, either international or national, do you consider that the motive is a desire to break the price in the foreign market or to sell the goods?

A. I think the motive is to sell the goods. Of course, I can conceive that a foreigner might go into a market thinking that he might break the price and then later on take advantage of that to sell the goods, but, after all, his motive is to sell the goods.

Q. Well, what, in your opinion, would be the
44760 effect of abolishing dumping in this industry, treating freight-absorbing sales as constituting dumping as compared with the effect of prohibiting dumping in international trade?

A. I think the effect is just the same in both instances. What it does is to remove by local prohibition one or more competitors from the district. That would benefit nobody except the other producers who sold in that district. Of course, in the international problem that is precisely what it is for, to give protection to home consumers against the foreign competitors.

Mr. Porter: "Home consumers"?

The Witness: Home producer.

Trial Examiner Norwood: Producer.

The Witness: Home producer; give protection as against their foreign competitors in the domestic industry, to do precisely the same. It would give protection to certain mills against the competition of other mills which formerly had been dumping, and the effect upon the consumers would be a certain tendency for higher prices than before.

By Mr. Bond:

Q. And as I think you said earlier in your testimony, that result could only be achieved in your opinion by legislation or some governmental order?

A. Or collusion.

44761 Q. Or collusion.

Now, I call your attention to the testimony of Dr. Viner at pages 15640-1:

Q. (By Mr. Wooden) "If the theory should be advanced that the system or method of pricing remained that I outlined in my long question is a method of system of meeting competition, what would you say as to that?"

And Dr. Viner answered:

"I would say that if the term 'meeting competition' is supposed to be synonymous with a method of price competition I would say no, I would say it is a system of matching prices so as to avoid competition, and that in a system of that sort I would interpret a price practice of that sort as intended to avoid price competition rather than a routine growing out of the forces of competition."

Professor, would you agree with Dr. Viner's testimony?

A. No, I would not agree. In the first place, I want to call attention to the use of the term "price competition," that runs all through his answer. I have already made it clear, I trust, that I do not recognize any difference, fundamentally, between "competition" and "price competition," and I am quite confident that the use of the term here is not in that limited and restricted sense in which I consider it permissible. It seems to me this answer is

merely trying to call attention to a special kind of

44762 competition which I think is quite incorrect. Now, as to the basic answer, there is the point of meeting competition. Now, I cannot draw a distinction between meeting competition and competing. I could think of meet-

ing competititors, and meeting competitors is not necessarily the same thing as meeting competition. For instance, competitors might have a meeting and agree to a combination which certainly would not be meeting competition, but would be meeting competitors. So ruling that out as a possible meaning, why, I cannot see why meeting competition is not just one feature of competition. If a mill comes into a new territory where it has not been before, finds other mills selling there at a certain price and proceeds to offer to sell at the same price, it is meeting competition, it is competing. If the mill instead of meeting the price that it finds there offers a lower price, you may say it is not now meeting competition, it is going below the delivered price, but it is competing no more, no less, than if it met the price. If, after the new mill came in, the old mills that are there decided to buck it by lowering their price, they are competing. If they decide to stand pat, they are in turn meeting the competition of the newcomer. Now, I could go on at length with illustrations like that, simply elaborating my opinion that you cannot draw a line between competition and meeting competition.

Trial Examiner Norwood: Well, wouldn't naming a lower price be a greater exertion, you might say, of 44763 competitive force than merely meeting it?

The Witness: Well, you see, Your Honor, suppose you had—you were considering whether to charge $1.10 or $1, and you would like very much to charge $1.10, but you find here a fellow who is selling for a dollar, and you come down from your desired price to his dollar. Now, you have just met his competition but you have a lowered price which you wanted to charge because his price was there. You have done a pretty important—you made a pretty important competitive decision. In other words, now, if instead of that you go in and offer 90 cents, why, you have made a still greater concession from the price you would like to get, and I would not hesitate to say that you had thrown more disturbance into the market by that act than by simply meeting his price.

Trial Examiner Norwood: You hit him a harder lick.

The Witness: Hit him harder, and you might get a harder wallop back from him, of course, but I would not be able, as an economist, to draw distinction between those things. They are all part and parcel of competition, as I see it, and holding a price steady under the stress of forces

which might be pushing everybody to raise it maybe just as vigorous and drastic a thing as lowering a price under entirely different circumstances.

Trial Examiner Norwood: Would you think it
44764 would be a difference in degree and not in the nature of the activity?

The Witness: Yes, and I would hesitate a little to make a general statement that it was even a difference in degree, because I can conceive of conditions, as, of course, you can, in which standing pat on a price in the face of competitors is just as drastic a thing as lowering or raising a price under different conditions, so I hesitate to go even so far by way of generalization.

By Mr. Bond:

Q. And in your reaching the conclusions that you have just stated, do you give any weight to the fact which we will assume that these producers have learned from experience that a lower price will always be promptly met by competitors?

A. Could you give me your whole question, Mr. Bond?

Mr. Bond: Will you read it?

(Question read.)

A. My conclusion to which you refer, I take it, is the conclusion that meeting competition is itself competition; am I right in that?

Q. The answer to His Honor's question.

A. Oh, yes, which elaborated the idea under various assumed conditions that meeting competition is part and parcel with competition. Yes, the fact that each competitor expects his competitors to take cognizance of his price-reducing acts, and probably meet them, is one rea-
44765 son which makes him reluctant to make a reduction of price, and which leads to competition being expressed more often in meeting prices than it might otherwise be.

Q. Now, on page 15644, Professor Viner testified as follows:

"The identity of price which is approximated under full price competition would be an identity of price received by a producer at his mill or point of production without regard to the location or the color of hair or the complexion of the purchaser."

Would you agree with that statement?

A. I think we can throw out right away the color of

hair and complexion, which, of course, I disagree with, which seem to be trivial and irrelevant.

Now, as to the basic principle involved, it frankly just does not make any sense to me. When you buy a thing you buy it as of a certain place, and you do not—and one of the qualities of the thing you buy is its location. Cement at point "A" and cement at point "B" are two different economic goods. The item of place utility is involved there, and when one says that when a buyer buys something, when a price is set for something, it has not anything to do with the place of delivery, it seems like nonsense to me. All of our economic principles of demand and supply, of the forces that determine price value, all assume that you are dealing with a certain good at the point where
44766 the buyer wants it, where it is going to be delivered to him, where he is going to use it, and the idea that buyers would take account of the mill net away off somewhere else after substracting freight would not ever occur to a buyer; I do not think it would ever occur to an economist as pertinent: The buyer does not care what the mill net is; what he wants to know is what he has got to pay for the good where he wants it, and the laws of economics which determine price always take account of that, so that I pretty emphatically would disagree with that answer.

Q. Then, in your opinion, would the economic law to which you have testified that under free competition there is a tendency for uniformity of price for a homogeneous product, would that law imply uniformity of mill nets at the mills of the different producers?

A. Not all, except in the one case where the good is sold right at the location of the mill, where there is not any transportation.

If a mill is located at point "A" there may be a market at point "A" also for its product, no transportation, and the price, then, of course, will be the mill net without any transportation charge in, but everywhere else the thing that is uniform in accordance with the economic principle is the delivered price after covering whatever freight or transportation costs are necessary to get it to the point of delivery.

44767 Q. Professor Viner testified at pages 15644-5 as follows:

Q. (By Mr. Wooden) "Suppose you had a case where a base price at one figure were in effect on one side of a

State line and a different base price in effect immediately on the other side of the State line, and both of those base prices being put into effect by one base bill and recognized and observed and followed by its competitors, what competitive theory exists on which that could be explained?"

And Dr. Viner answered:

"That sort of a pattern would demonstrate to me that there was an understanding of some sort in an industry that a leader was to be followed with respect to price in a certain area, and that whether there was competition or not the competition, if it did exist, should not take the form of price competition in that area."

Do you, Professor, agree with that statement?

A. No, I do not. Once more I have to make my qualification as to price competition. It seems to me that that answer cannot hide behind any distinction between competition and price competition. Now, on the general question, in the absence of any direct evidence of collusion or combination, I would be quite unable to draw an inference from that hypothetical statement that there was collusion or combination because I can readily conceive of circumstances which might bring about just that situation. In connection with a state of competition, I can con-
44768 ceive that this mill in question may have for reasons which are not stated and which I am therefore not aware, had decided that it was to its interest to have one base price in this State and another base price across the State line. Having made that decision of—

Trial Examiner Norwood: Well, that would be an arbitrary matter. Is there really any economic reason that you can think of for the prices dividing that way?

The Witness: Not in the hypothesis as stated. I am answering purely a hypothetical question, Your Honor, and I cannot tell from the state of the question what it was that induced this company to do so, but I can assume that it did do so on the basis of its own judgment. Its judgment might even have been foolish, but at any rate the mill decided to establish one base in one State, one in another.

Trial Examiner Norwood: Well, can you assume any reason it may have for so doing; can you recall or imagine any economic reason it would have for doing that?

The Witness: I can imagine, of course I do not qualify as a factual expert, so I am handicapped in thinking of

actual practical conditions here, but I can imagine different transportation situations, different—especially different competitive situations on the part of other mills which might lead a mill to exercise its judgment this way.
44769 Having decided, according to its best judgment, to establish these two base prices, then I should expect the other mills to conform to this. I think not only would it be possible for them to do so without collusion, but virtually inevitable that they should do it under this system as assumed, and so I do not see any necessity under those hypotheses of inferring collusion.

By Mr. Bond:

Q. With reference to the testimony of Dr. Viner, on pages 15646-8, to the effect that if over a long period of time the base prices between two separate producing points have remained at a constant differential, he considers this to be a rigidity which would be wholly inconsistent with the existence of active or genuine price competition, would you agree with his testimony?

A. No, I would not. I would need to know a great deal more about the circumstances in that case before I would feel justified in inferring the absence of competition. As a matter of fact, different producing regions in any nation are connected by economic forces and conditions, so that it is not unnatural that there should be a fairly constant differential between prices in different regions. And
44770 it would certainly take more information about the particular case than is given in that question to lead me to an inference of collusion or the absence of competition.

Q. Now, referring to the testimony of Dr. Viner, on pages 15654-5, to the effect that where a number of base prices had not changed for a period of approximately five years from July, 1933, to June, 1938, this showed that there had not been during that period any price competition, and that active price competition means a moving price that moves in response to changes in demand and supply, and that absolute uniformity and absolute constancy cannot result from the spontaneous activity of a large number of individuals acting as individuals, would you agree with that testimony?

A. Once more I make my stock observation about price competition, which I need not enlarge upon.

I am also a little uncertain about the use of the word

"absolute" and other words of that sort. It may be that if the question refers only to the change, there was no change at all in the base price between the two dates, it could be described as an absolute thing. But it seems to me that answer brings in too much of the absolute, utterly unmovable feature to make it practical, applicable.

On the general question, I see no reason why under conditions of imperfect competition such as prevail in
44771 the cement industry there might not be a state of equilibrium reached which no competitor will wish to change for a considerable period of time. At any rate, it would not be possible to infer a condition of collusion or absence of competition.

44774 A (Continuing) Well, I would go on to say that if we recognize the fact that—recognize that from the hypotheses that have been put before me,
44775 the cement industry operates under conditions of imperfect competition, this matter becomes much clearer.

It would appear that Professor Viner has ignored the distinction between imperfect competition and perfect or pure competition.

In a condition of pure competition, as on a produce exchange, we will say, or on the wheat market, it is quite natural to find prices constantly moving according to the shifting conditions of demand and supply, and this constant fluctuating situation of price in relation to demand and supply, which Professor Viner mentions, that we expect to find quite commonly prevalent where the conditions of pure or perfect competition prevail. But cement is produced under conditions of imperfect competition, where you do not find normally that constant fluctuation of prices meeting every variation in conditions of demand and supply, and, therefore, the fact that you do not find that constant fluctuation does not set up in my mind a necessary inference of collusion or the lack of competition.

By Mr. Bond:

Q. Now, let me ask you to assume further that during the period in question production costs did rise substantially. Would that affect or add to your answer to
44776 the previous question?

A. That would add further to my difficulty in assuming a condition of collusion or combination, because the assumed fact that costs were rising accompanied by

the further assumption that prices did not rise might very well be explained by the fact that competition was so active in that time that it held prices down in spite of the rise in costs.

Q. Assume, if you will, Professor, that in the summer of 1932 the base prices of cement in the Middle West were generally advanced 40 to 50 cents a barrel; and assume that at that time the demand for cement, and, therefore, the consumption of cement, was declining; and assume that in the period from 1930 to the spring of 1932 the base price of cement had steadily declined, so that throughout the Middle West the base price of cement had declined from, say, $1.50 to 75 cents; and assume that at the base price of 75 cents all the mills regarded this as unprofitable.

Will you state to what extent you as an economist consider such increases in price at that time—

44778 Q. Then, assume that at the price of 75 cents producers regarded this as unprofitable.

(Question read as follows):

Q. "Assume, if you will, Professor, that in the summer of 1932 the base prices of cement in the Middle

44779 West were generally advanced 40 to 50 cents a barrel; and assume that at that time the demand for cement, and, therefore, the consumption of cement was declining; and assume that in the period from 1930 to the spring of 1932 the base price of cement had steadily declined, so that throughout the Middle West the base price of cement had declined from, say, $1.50 to 75 cents; and assume that at the base price of 75 cents producers regarded this as unprofitable.

"Will you state to what extent you as an economist consider such increases in price at that time were inconsistent with the existence of a freely competitive market?")

A. I would not be able to infer from those hypotheses that the price could not be advanced without collusion. After all, when the price has gone down to so low a point that producers regard it as unprofitable, at some time, sooner or later, prices are going to rise, and when they do rise the presence of competition is not going to prevent it. So that the mere fact that some time after a period of declining prices, even in the presence of the low demand, the price rose, would not seem to me to require a necessary inference of collusion. What I suppose happens in

those cases is that producers regarding this price as unprofitable are only too glad to have some producer
44780 make the start of raising the price, and when one producer does that the others follow, without any combination or collusion.

By Mr. Bond:

Q. Now, in response to the long hypothetical question which Mr. Wooden asked of Dr. Fetter, and which I have already previously read to you, Dr. Fetter testified, on page 17645, that the conditions described in Mr. Wooden's question did not conform to typical competitive selling methods.

Do you agree with that statement?

A. I am in difficulty there, because I don't know what is the meaning of "typical competitive methods,"—or, rather, I doubt very much if there is such a thing as a typical competitive method.

I have in mind right now two or three different methods of selling goods under conditions of competition, which are very different, indeed, and under those conditions I can't conceive of there being any one method which is a typical method of competition.

Q. Do you see in the method of marketing described any relation to competitive selling methods in general?

A. Well, I see no reason why the method there described should not come into existence and continue in operation under a condition of competition.

Q. In answer to another question by Mr. Wooden, as to what was the wholesale price of cement under
44781 the pricing method that he had outlined in his long hypothetical question, Dr. Fetter testified as follows, at page 17656:

"The word 'price' as applied to a market, priced in and at a market, is a freightless price. It is a price which does not include an element of freight. The word 'delivered price' is a compound term meaning both the price of the cement and the price of the freight necessary to transport the cement from the place at which it is sold to the destination."

Continuing, he said:

"I should say there is no price in the ordinary economic sense. You are using the word 'price' in a different sense."

Do you agree with that testimony?

A. No, I do not.

I think that the price, wholesale price or retail price, is the delivered price including whatever transportation cost is necessary to get it to the point of delivery.

According to that answer it would appear that there can't be a price of anything except at the location of the mill. There could not be a price of cement in New York City, for instance; because that is not a place where a mill is located. The price is the price at the point where the goods are delivered to the buyer. Even if, for some reason or other, one should want to divide that price into two parts and say one is for freight and the other part
44782 is for all of the other items of cost, you would not arrive at any different situation, because it applying the law of demand and supply, buying and selling, it would be always the sum of those two things that would be involved, and the price comes right back to an item which covers all costs necessary to deliver the goods to the buyer at destination.

44783 Q. I am showing you Respondents' Exhibit marked for identification No. 3466-A to C. Is that the list of the authorities that you examined, as you have just testified in your last answer?

A. Yes, sir; that is the list.

44787 Q. Professor, is the list that I have just shown you the same list to which you referred on two previous occasions in your testimony?

44788 A. Yes, sir; it is.

Q. Professor, at page 17686 Dr. Fetter expressed his concurrence in the general economic principle that under free competition prices of a standardized commodity in a given market would tend to be uniform, but, he said, that principle had no application to goods sold at different destinations on delivered prices under a basing-point system. He stated that in that kind of market, that economists conceive in studying this general principle they thought of all buyers and sellers being gathered together in one spot.

Do you agree with this testimony?

A. No, sir; I don't agree. There seem to be two propositions there. I don't agree that the general principle that the price of a homogeneous commodity in a given market at a given time tends to be uniform. It does not relate to goods sold under the basing-point system. In fact, I think it relates to those goods just the same as to any other

goods, and always relates to goods at the point of delivery to the buyer.

The second proposition was to the effect that economists consider a market only as a place where all the buyers and sellers are present. I have defined a market as a place where goods are bought and sold, where buyers and sellers exert their influence, and meeting point of the forces of demand and supply. Now, that does not necessarily imply that the buyers and sellers all be actually present. They
can be represented by their salesmen, brokers, or
14789 agents, and they might even be in communication
by telephone, telegraph, or otherwise, with some-
body acting for them at the place.

Q. On page 17694, in response to a hypothetical question which assumed that a number of basing-point prices were in effect without change for a period from January, 1933, to 1938, Dr. Fetter testified as follows:

"Such rigid prices, I think, would be taken by any economist as indicating a lack of the normal or usual competitive forces at work. During all that time the delivered price to the buyers in every portion of the territory of those mills whose prices controlled those areas would have remained unchanged."

Do you agree with the Professor's testimony in that respect?

A. No, sir. I think that is the same question to which I have already testified with respect to other evidence given by Professor Fetter and Viner.

I would not regard that situation as producing a necessary inference of collusion, because, as I have said, I
can conceive of circumstances which would lead competi-
tors not to undertake to disturb a price equilibrium
14790 of that sort, even though each one is acting on his
own individual interest without combination or con-
ference or agreement with other competitors.

Q. Now, on page 17695, Dr. Fetter added:

"Even rigidity for a few months would be very extraordinary in any industry where there were competitive conditions."

Would you agree with that testimony?

A. I would not agree.

Q. At pages 17695-6, in response to a question stating that a number of basing-point prices were advanced in July, 1932, from 85 cents to $1.25 a barrel, and with no

other facts stated as to the antecedent course of prices or as to costs of manufacture, Dr. Fetter testified that this would seem to be an extraordinary phenomenon, and he continued that his answer would not be affected if it were shown that the prices prior to July, 1932, were abnormally low, because he considered that the ability to raise prices by that amount in the very depths of the depression was indicative of a power of control over prices.

Do you agree, Professor, with that testimony?

A. No, sir. It seems to me that under the conditions named it is entirely possible without combination or agreement for a competitor to raise the price and for other competitors to follow that raise, so that the
44791 price is raised.

With reference to the "depths of depression," after all when you are in the depths of depression sooner or later prices do rise, and it would be quite extraordinary if, after coming out of every depression when a rise in prices comes, we would have to infer combination or collusion.

Q. Well, then, would you as an economist consider that this price advance in July, 1932, raised any necessary inference of collusion or cooperation between or among the individual cement manufacturers?

A. No, I would not.

Q. At page 17703, in response to a question as to what is the actual or true price of cement under the basing-point system of delivered prices, Dr. Fetter testified as follows:

"In the matters in which the economist is interested as to price it is the actual price of cement received by the cement company and paid for cement by the buyer, not including freight, that the economist would be interested in."

Do you agree with that statement?

A. No, I do not. As I have said many times, I think the price in which the economist is interested is the delivered price, reimbursing the seller for costs—all costs incurred to deliver the good at the point of use or delivery, and therefore includes freight as well as other costs.

Q. Before you except to Dr. Fetter's concept of price, would it be possible to say that there was a price
44792 for cement in, for example, New York City?

A. He apparently denies that there can be any price of cement except at the location of the mill. And if

there is no mill in New York City, as I presume there is not, there could be no price of cement in New York City.

Q. At page 17721-2, Dr. Fetter testified that under the basing-point system of delivered prices there was no market in the economic sense.

Do you agree with that statement?

A. No, I do not. I regard the market as the place where buyers and sellers exchange the good, the place where the good is delivered to the buyer, and the basing-point system seems to me not to deny that there is a market at the place where the goods are delivered.

Q. What would you say was the consensus of opinion among economists as to limiting or defining a word in the restricted sense which Dr. Fetter did in this testimony?

A. I think the overwhelming consensus of economists is in disagreement with Dr. Fetter's statement.

Q. On page 17732 of the record, Professor Fetter testified that in the basing-point system the forces of
44793 competition converge in the long run upon the mill.

Do you agree with that statement?

A. No, sir. I think the forces of competition converge at the market, which agrees with my definition of "market," that that is the place where the goods are delivered to the buyer, or the destination point under the basing-point system.

Q. Beginning at page 17732 and running for a considerable number of pages Dr. Fetter testified, in substance, that when the different cement companies meet the lowest price quoted by any competitor at any given destination under a basing-point system of selling, this was not properly described as meeting competition, and was not, in fact, competition at all.

Do you agree with that testimony?

44794 A. No, sir. I should say that this was a clear case of meeting competition, and it was a competitive act, and represents a state of competition.

By Mr. Bond:

Q. On page 17747, Dr. Fetter referred to "an artificial system of pricing such as the basing-point system."

Do you agree with the characterization which he has made in that testimony?

A. No, sir. I can't think of any reasonable definition of the word "artificial" which would make it properly applicable to the basing-point system of marketing cement,

which, in accordance with the hypotheses which have been presented to me, would seem to have been a natural outgrowth of the historical development of this industry.

Q. At page 17751 of the record, Dr. Fetter was asked the following question by Mr. Wooden:

"If it should appear in this record that less than
44795 50 percent of sales of a number of basing-point mills were made at their own basing-point prices, and that the remainder of their sales were made at lower mill nets, some of them as much as 60 or 70 cents a barrel lower than their own basing-point prices, what, if anything, would that indicate to you as an economist as to the average level of such basing-point prices?"

In response to that question Dr. Fetter testified:

"It would indicate that the base price must be decidedly high to permit such large deductions and such a great difference between the base price and the net realized price."

Do you agree with that testimony?

A. The term "high" is a relative term. I do not know what he is comparing that with when he says the price is high. As a matter of fact, I should think that that degree of freight-absorbing sales was not an indication of a high price, but rather of a higher proportion of overhead costs in the production costs of the mills concerned, and also a very undoubted presence of competition between them.

Q. On page 17755, in answer to the question:

"In your opinion, Doctor, can the basing-point system of identical delivered prices exist or be maintained as the result of competitive forces operating independently of each other?"

Dr. Fetter testified:

44796 "I think not."

Do you agree with that testimony?

A. No, I do not. In the first place, I question the correctness of the phrase "the basing-point system of identical delivered prices," because I think under the conditions of competition the price of a homogeneous article in a market in which buyers are well informed and have their choice of different sellers from whom to buy, the price is going to be identical. It does not depend upon a particular method of marketing. As to whether that situation could have arisen under a condition of competition, I should say it naturally could have arisen under such conditions, and in that I disagree with the statement of the witness.

Q. On the same page Mr. Wooden asked the following question of Dr. Fetter:

"In your opinion can the basing-point system of identical delivered prices exist or be maintained as an expression of the economic law of supply and demand?"

Dr. Fetter testified:

"I think not."

Do you agree with that testimony?

A. Once more I take the same exception to the phrase "the basing-point system of identical delivered prices," and I am also a little reluctant to use the phrase "expression of the law of demand and supply"—is that the words used?

44797 Q. "As an expression of the economic law of supply and demand."

A. I do not want to be too meticulous about the matter of wording, and I have no doubt the counsel who asked that question would have in mind the same meaning that I would have for that phrase, but if I may assume that that means that this system could not exist under conditions of competition, then I would disagree, because I believe such a system could very well exist under conditions of competition. Or does the question relate to supply and demand?

Q. Only to the question of supply and demand.

A. Oh, yes. Well, the law of supply and demand is an economic law, which states what results upon price will follow such actions by buyers and sellers, and that I do not think of conditions existing—what is that word again?

Q. "As an expression of the economic law of supply and demand."

A. I do not quite think of conditions as expressing the law of supply and demand. You see, I am a little troubled by that phrase. If this means that the law of supply and demand was not working under these conditions, I would, of course, disagree. And I think that is probably what it does mean. I am not trying to be troublesome here in drawing fine points of terminology. And—

Well, I think that answers the question.

44798 Q. On page 17755, Mr. Wooden also asked Dr. Fetter:

"In your opinion, can the basing-point system of identical delivered prices exist or be maintained without some form of cooperation among competitors?"

On page 17757 Dr. Fetter answered as follows:

"It is my conclusion as a student of basing-point practice of various industries that it is of the essence of the basing-point practice that there is cooperation and tantamount to an agreement.

"It requires a mutuality of behavior on the part of those engaged in the system.

"I have already indicated, in part, what it is that each one does or refrains from doing. The basing-point mill refrains from reducing its price to prevent raids into its territories; permits the outsider to match the governing price there, and, in turn, the other mill, when its territory is invaded, does not behave like a competitor but like a conspirator."

Do you agree with that testimony?

44799 Trial Examiner Norwood (Addressing the witness): Are you familiar with the basing-point system as a result of your studies and observations?

The Witness: I think I am familiar with the application of general economic principles to basing-point systems as they may be stated to me in hypothetical
44800 questions. I consider myself able to apply those principles.

Mr. Bond: Does MacIntyre seriously contend that Dr. Fetter has any more knowledge of the basing-point practice than that?

Mr. MacIntyre: Certainly. The record shows him to have it.

Trial Examiner Norwood: I shall overrule the objection.

I accept this witness as an expert on the subjects mentioned, as an expert economist whose studies have included this subject under investigation.